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PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 26th December, 1880, and is hereby promulgated for general information:—

ACT No. XVI OF 1880.

An Act to regulate the Traffic on the Madras Irrigation and Canal Company's Canal.

WHEREAS, by the twenty-seventh clause of an Indenture made on the third day of June, one thousand

Preamble.

eight hundred and sixty-three, between the Secretary of State for India in Council of the one part, and the Madras Irrigation and Canal Company (hereinafter referred to as "the Company") of the other part, it was, amongst other things, provided that the Company should be authorized and empowered to charge such tolls for navigation, and such fares or rates for the conveyance of passengers, animals and goods, as should not exceed the rates, tolls or fares which should be defined and sanctioned by an Act of the Indian legislature; and that the Company should not in any case charge any higher tolls, fares or rates whatsoever; and whereas it is expedient to define and sanction, for the purposes of the said clause, fares and rates for the conveyance of passengers, animals and goods;

And whereas it is also expedient to empower the Company to make rules for the conveyance of passengers, animals and goods upon, and the use, management and working of, its canal; It is hereby enacted as follows:—

Short title.

Commencement.

1. This Act may be called "The Madras Irrigation and Canal Company's Act, 1880;" and it shall come into force at once.

2. The fares and rates specified in the schedule Fares and rates for hereto annexed shall be deemed to be the fares and rates defined and sanctioned for the purposes of the said clause.

Company empowered to make working rules for its canal.

3. The Company may, from time to time, make rules for the following purposes,

that is to say:—

(a) for licensing vessels (other than those of the Company) to navigate the canal and for registering vessels so licensed and denoting upon each its carrying capacity;

(b) for fixing the maximum number of passengers or animals, and the maximum amount of goods, which vessels navigating the canal may carry; and

(c) generally for regulating the traffic upon, and the use and management of all vessels upon, the canal.

4. Any such rule may contain a provision that

Penalty for breach of any person committing a breach of it shall be liable to a fine which may extend to fifty rupees, or, in default of payment of such fine, to simple imprisonment for a term which may extend to one month.

5. All such rules shall, when sanctioned by the

Notification of rules. Governor of Fort St. George in Council and published in the *Fort St. George Gazette*, have the force of law.

Power to cancel rules. The said Governor in Council may at any time cancel any such rule.

6. A copy of this Act and the rules made

Copy and translation of Act, &c., to be shown at stations and on vessels. hereunder, and of the Time-table and Tariff of Charges which may from time to time be observed for the Company's vessels navigating the canal, shall be exhibited, both in English and in Telugu, in some conspicuous place at each station of the canal, and

D. FITZPATRICK,
Secy. to the Govt. of India.



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PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 26th December, 1880, and is hereby promulgated for general information:—

ACT No. XVI OF 1880.

An Act to regulate the Traffic on the Madras Irrigation and Canal Company's Canal.

WHEREAS, by the twenty-seventh clause of an Indenture made on the third day of June, one thousand eight hundred and sixty-three, between the Secretary of State for India in Council of the one part, and the Madras Irrigation and Canal Company (hereinafter referred to as "the Company") of the other part, it was, amongst other things, provided that the Company should be authorized and empowered to charge such tolls for navigation, and such fares or rates for the conveyance of passengers, animals and goods, as should not exceed the rates, tolls or fares which should be defined and sanctioned by an Act of the Indian legislature; and that the Company should not in any case charge any higher tolls, fares or rates whatsoever; and whereas it is expedient to define and sanction, for the purposes of the said clause, fares and rates for the conveyance of passengers, animals and goods;

And whereas it is also expedient to empower the Company to make rules for the conveyance of passengers, animals and goods upon, and the use, management and working of, its canal; It is hereby enacted as follows:—

Short title.

Commencement.

1. This Act may be called "The Madras Irrigation and Canal Company's Act, 1880;" and it shall come into force at once.

2. The fares and rates specified in the schedule Fares and rates for hereto annexed shall be conveyance of passen- deemed to be the fares and gers and goods. rates defined and sanctioned for the purposes of the said clause.

Company empowered to make working rules for its canal.

3. The Company may, from time to time, make rules for the following purposes, that is to say:—

(a) for licensing vessels (other than those of the Company) to navigate the canal and for registering vessels so licensed and denoting upon each its carrying capacity;

(b) for fixing the maximum number of passengers or animals, and the maximum amount of goods, which vessels navigating the canal may carry; and

(c) generally for regulating the traffic upon, and the use and management of all vessels upon, the canal.

4. Any such rule may contain a provision that Penalty for breach of any person committing a rules. breach of it shall be liable

to a fine which may extend to fifty rupees, or, in default of payment of such fine, to simple imprisonment for a term which may extend to one month.

5. All such rules shall, when sanctioned by the Notification of rules. Governor of Fort St. George in Council and published in the *Fort St. George Gazette*, have the force of law.

Power to cancel rules. The said Governor in Council may at any time cancel any such rule.

6. A copy of this Act and the rules made hereunder, and of the Time-table and Tariff of Charges which may from time to time be observed for the Company's vessels navigating the canal, shall be exhibited, both in English and in Telugu, in some conspicuous place at each station of the canal, and

9. Nothing in this Act shall be deemed to prevent any person from being arrested, prosecuted or punished under any other law for any act or omission which constitutes an offence against this Act or the rules made under it: Provided that no person shall be punished twice for the same offence.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 1st January, 1881, and is hereby promulgated for general information:—

ACT NO. I OF 1881.

An Act for the determination of claims to Táj Mahal's pension.

WHEREAS, by a treaty dated the 24th Shabán 1244, Hijri, corresponding with the first day of March, 1829, and made between His Majesty the King of Oudh and the Government of the Hon'ble the East India Company, it was (amongst other things) agreed that a certain pension therein specified should be paid by the English Government to one Nawáb Táj Mahal therein named, and that if she should die leaving an heir or heirs the English Government might at its election continue as before such pension to her heirs, or make over to them the principal sum proportionate to such pension according to the rate thereinbefore mentioned;

and whereas the said Táj Mahal is now dead and doubts exist as to who are her heirs, and it is therefore expedient to provide for the appointment of a person to represent her estate for the purpose of receiving such pension;

and whereas the Secretary of State for India in Council is desirous of making over to the persons entitled to receive the said pension the principal sum proportionate thereto as provided in the said treaty, and it is expedient to empower the said Secretary of State in Council to capitalize the said pension pending the appointment of a person as aforesaid; It is hereby enacted as follows:—

1. This Act may be called "Táj Mahal's Pension Act, 1881"; and it shall come into force at once.

2. Any person considering himself entitled to the said pension or any portion thereof may apply in writing to the Court of the District Judge of Lucknow (hereinafter called the District Court) for a certificate authorizing him to receive the same.

The application shall be in such form and shall contain such particulars as the Governor General in

Council may from time to time, by rules to be published in the *Gazette of India*, direct.

3. The District Court shall fix a day for hearing the application, and shall cause to be stuck up in the court-house, and otherwise published or made known at the expense of the applicant in such manner as it thinks fit, a copy of the application, with a notice stating the time and place at which it will be heard, and calling upon all persons claiming to have a better right than the applicant to the grant of the certificate to come in and oppose the application.

4. On the day so fixed, or any subsequent day to which the Court may adjourn the hearing, the Court shall, if no person claiming to have a better right than the applicant to the grant of the certificate is present, hear the application; and if, after recording the evidence produced by the applicant in support of his claim, and making such further enquiry (if any) as it thinks necessary, the Court is of opinion that the applicant has established his claim, it shall make an order for granting him a certificate.

In the event of the applicant not having, in the opinion of the Court, established his claim, it shall make an order dismissing his application.

5. In any case in which any person claiming to have a better right than the applicant to the grant of the certificate is present, the Court shall, after hearing the application and recording the evidence produced by the applicant in support of his claim, hear such person and record the evidence produced by him in support of his claim, and shall then, after making such further enquiry (if any) as it thinks necessary, determine which of the parties (if either) has established his claim to the certificate, and shall make an order for granting the same accordingly.

In the event of neither party having, in the opinion of the Court, established his claim, the Court shall make an order dismissing both the application and the counter-claim.

6. When any order dismissing an application under section four, or any order under section five, is made, an appeal by any party to the proceedings, who deems himself aggrieved by such order, shall lie to the High Court, which may make an order dismissing such appeal or granting a certificate, or otherwise reversing or varying the order of the District Court, as it thinks fit.

7. The period of limitation for an appeal under section six shall be sixty days from the date of the order appealed against.

Period of limitation for appeal.

In computing such period, and in all respects not herein specified, the limitation of such appeals shall be governed by the provisions of the Indian Limitation Act, 1877.

8. A certificate granted under this Act shall specify the payments which the person to whom it is granted is entitled to receive, and shall contain such other particulars as the Governor General in Council may from time to time prescribe in this behalf.

Form of certificate.

9. Every certificate granted under section four, or section six,

Effect of certificate.

and every certificate granted under section five, when the period of limitation fixed by section seven has expired without an appeal having been preferred against the order granting such certificate, shall, while it remains in force, be conclusive evidence against the said Secretary of State in Council of the right of the person to whom it has been granted to receive the payments specified therein, and shall, unless or until it is rescinded and the authority rescinding it has given to the said Secretary of State in Council notice of such rescission, empower such person to give to the said Secretary of State in Council a full discharge for any such payment.

10. The said Secretary of State in Council shall not be bound to pay the said pension or any portion thereof to any person claiming the same, except on the production by such person of a certificate, granted in the manner herein provided, authorizing him to receive the same.

11. Nothing herein contained shall be deemed to affect the right of any person to recover by suit from the holder of a certificate granted under this Act the amount of any payment made to him in virtue of such certificate.

12. The Court ordering any certificate to be granted under this Act may, if it thinks fit, direct that before such certificate is granted, such security (if any) as it thinks necessary shall be taken from the person to whom such certificate is to be granted, for his rendering an account of the payments to be received by him in virtue of such certificate to any person who may be entitled to recover from him in manner referred to in section eleven the whole or any part of such payments.

13. The District Court may, on the application of any person who has recovered by suit from the holder of a certificate granted under this Act the amount of any payment made to him in virtue of such certificate, grant a certificate to such person in supersession, wholly or in part, as the case may be, of the former certificate.

No appeal shall lie from any order under this section.

On the grant of a fresh certificate under this section the former certificate shall be deemed to be rescinded wholly or in part, as the case may be.

Effect of fresh certificate.

14. In all proceedings under this Act the District Court and the High Court shall, as far as may be and except as herein otherwise provided, exercise the powers and follow the procedure conferred on, and prescribed for, a Court of first instance and a Court of appeal respectively by the Code of Civil Procedure: Provided that nothing contained in Chapter XLV of the said Code shall apply to any order made in any such proceeding.

15. The provisions of section thirteen of the said Code shall apply to all cases under section five of this Act in which the question of heirship to the said Táj Mahal, having been directly and substantially in issue in a suit in a Court of competent jurisdiction between the claimants, or between parties under whom they or any of them claim, litigating under the same title, has been heard and finally determined by such Court.

16. All payments heretofore made by or on behalf of the said Secretary of State in Council under the said treaty shall be deemed to have been made in accordance with law: Provided that nothing in this section shall affect the right of any person to recover by suit the amount of any such payment from the person to whom the same has been made.

17. The said Secretary of State in Council may, pending the grant of a certificate as hereinbefore provided, invest in securities of the Government of India the principal sum proportionate to the pension of the said Táj Mahal according to the rate mentioned in the said treaty, and may invest the income from time to time resulting from such securities in like securities.

And, thereupon, all further claim to such pension and income shall cease, and the persons obtaining a certificate in manner hereinbefore provided shall be entitled, in lieu of such pension and income, to the securities aforesaid, together with the uninvested income (if any) which from the date of making such investment has resulted from such securities.

18. The said Secretary of State in Council shall, without unnecessary delay, invest, in securities of the Government of India, all arrears of such pension due at the time of the passing of this Act, and all such arrears falling due thereafter, and before the investment of the principal sum aforesaid. When any such arrears have been so invested, all further claim in respect thereof shall cease, and the persons obtaining a certificate in manner hereinbefore provided shall, in lieu of such arrears, be entitled to the securities in which they have been invested and the income resulting therefrom.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 1st January, 1881, and is hereby promulgated for general information:—

ACT No. II OF 1881.

An Act to regulate the Navigation of the Pegu and Sittang Canal, and to provide for the protection of the said Canal and the execution of works necessary for its maintenance.

WHEREAS the Government has constructed a canal connecting the waters of the Pegu and Sittang rivers, partly by digging artificial channels and partly by using the water-bed of the Ka-ya-zoo creek; and whereas it is necessary to provide for the navigation, protection and maintenance of the said canal; It is hereby enacted as follows:

Preamble.

Preliminary.

Short title.

1. This Act may be called "The Pegu and Sittang Canal Act, 1881";

Commencement.

and it shall come into force at once.

Interpretation-clause.

2. In this Act, unless there is something repugnant in the subject or context,—

"The canal."

(1) "The canal" means the Pegu and Sittang Canal,

and includes—

(a) all channels and reservoirs now or hereafter constructed, maintained or controlled by the Government for the supply or storage of water in connection with the said canal, or supplemental thereto, between the Sittang lock, situated at Myit-kyo, on the Sittang river, and the Pegu lock, situated near the village of Sin-o-bo, on the Pegu river;

(b) all works, embankments, structures and supply and escape-channels connected with the canal or with the said channels and reservoirs;

(c) all lands occupied by the Government for the purposes of the said canal, and all buildings, machinery, fences, gates and other erections, trees, crops, plantations or other produce occupied by, or belonging to, the Government, upon such lands:

"Vessel."

(2) "Vessel" includes boats, rafts, timber and other

floating bodies:

(3) "Canal Officer" means an officer appointed under this Act by the Chief Commissioner to exercise control over the canal or any part thereof:

(4) "Superintending Canal Officer" means an officer exercising general control over the canal.

"Superintending Canal Officer."

3. The Chief Commissioner may from time to time declare, by notification in the *British Burma Gazette*, the officers by whom and the local limits within which, all or any of the powers or duties hereinafter conferred or imposed shall be exercised or performed.

Navigation of the Canal.

4. Such tolls as the Chief Commissioner may from time to time, by notification in the *British Burma Gazette*, direct, shall be levied from all vessels entering or navigating the canal.

5. Any vessel entering or navigating the canal contrary to the rules made in that behalf under this Act by the Chief Commissioner, or so as to cause danger to the canal or to the other vessels therein, may be removed or detained, or both removed and detained, by a Canal Officer, or by any other person duly authorized under section three in that behalf.

The owner of any vessel causing damage to the canal, or removed or detained under this section, shall be liable to pay to the Government such charge as the Canal Officer, with the approval of the Superintending Canal Officer, determines to be necessary to defray the cost of repairing such damage, or of such removal or detention, as the case may be.

6. If any toll or charge due under this Act in respect of any vessel is not paid on demand to the person authorized to collect the same, the Canal Officer may seize and detain such vessel and the furniture thereof, until such toll or charge, together with all expenses arising from such seizure and detention, is paid in full.

7. If any charge due to the Government in respect of any cargo or goods carried in a Government vessel on the canal, or stored on or in lands or warehouses occupied for the purposes of the canal, is not paid on demand to the person authorized to collect the same, the Canal Officer may seize such cargo or goods, and detain it or them until the charge so due, together with all expenses arising from such seizure and detention, is paid in full.

8. Within a reasonable time after any seizure under section six or section seven, the Canal Officer shall give notice to

Power to sell property seized under sections 6 and 7.

the owner or person in charge of the property seized that it, or such portion of it as may be necessary, will, on a day to be named in the notice, but not sooner than twenty-one days from the date of the notice, be sold in satisfaction of the claim on account of which such property is detained, unless the claim is discharged before the day so named;

and if such claim is not so discharged, the Canal Officer may, on such day, sell the property seized, or such part thereof as may be necessary to yield the amount due, together with the expenses of such seizure and sale.

The residue (if any) of such property, and of the proceeds of the sale, shall be made over to the owner or person in charge of the property seized.

9. If any vessel is found abandoned in the canal, or any cargo or goods carried in a Government vessel on the canal, or stored on or in lands or warehouses occupied for the purposes of the canal, is or are left unclaimed for a period of two months, the Canal Officer may take possession of the same.

The officer so taking possession shall publish a notice, in such manner as the Chief Commissioner may from time to time by rule direct, that if such vessel and its contents, or such cargo or goods, is or are not claimed previously to a day to be named in the notice, not sooner than thirty days from the date of such notice, he will sell the same; and if such vessel, contents, cargo or goods is or are not so claimed, he may, at any time after the day named in the notice, proceed to sell the same.

The said vessel and its contents, and the said Disposal of proceeds of cargo or goods, if unsold, or, if a sale has taken place, the proceeds of the sale, after paying all tolls and charges due in respect of the vessel, cargo or goods and all expenses incurred by the Canal Officer on account of the taking possession and sale, shall be made over to the owner of the same, when his ownership is established to the satisfaction of the Canal Officer.

If the Canal Officer is doubtful to whom such property or proceeds should be made over, he may direct the property to be sold and the proceeds to be paid into the district-treasury, there to be held until the right thereto is decided by a Court of competent jurisdiction.

Maintenance of the Canal.

10. A Canal Officer, empowered by the Commissioner of the Division generally or specially in this behalf, or any other person acting under the general or special order of such officer, may enter on any land in the neighbourhood of the canal and remove any obstructions, and may close any channels and do any other thing necessary or convenient for the maintenance of the canal.

11. Any such officer or other person may, for the purposes of any enquiry relating to any part of the canal under the charge of such officer, enter upon any such lands, and undertake surveys

or levels thereon, and dig and bore into the sub-soil;

and make and set up suitable land-marks, level-marks and water-gauges;

and do all other acts necessary for such purposes;

and, where otherwise such enquiry cannot be completed, such officer or other person may cut down and clear away any part of any standing crop, fence or jungle.

12. In case of any accident happening or being reasonably apprehended to the canal, any such officer or other person may enter upon any such lands, and may execute all works which may be necessary for the purpose of repairing or preventing such accident.

13. In every case of entry under section ten, Compensation for damage eleven or twelve, the Canal Officer shall tender, as soon as may be reasonably practicable, to the owner or occupiers of the land compensation for any damage which may be occasioned by such entry and by any proceeding under such section.

In case of dispute as to the sufficiency of the amount so tendered, the Canal Officer shall forthwith refer the same for decision by the Deputy Commissioner, whose decision thereon shall be final.

Obtaining Labour and Materials for Work on the Canal.

14. Whenever it appears to a Canal Officer that, unless some work is immediately executed, such serious damage will happen to the canal as will cause sudden and extensive public injury,

and that the labourers or materials necessary for the proper execution of such work cannot be obtained in the ordinary manner within the time that can be allowed for the execution of such work so as to prevent such damage,

such officer may, by order under his hand, direct that the provisions of this section shall be put into operation for the execution of such work, and thereupon—

(a) every able-bodied person whose name appears in the list hereinafter mentioned shall, if required so to do by such officer or by any person authorized by him in this behalf, be bound to assist in the execution of such work by labouring thereon as such officer or other person directs, and

(b) such officer or any person authorized by him in this behalf may enter into and upon any immoveable property in the neighbourhood of the Canal, and take possession of, appropriate and remove any trees or bamboos, whether standing or not, and any timber, mats, ropes or other materials found in or upon such property, and use the same for the purposes of such work.

Every person authorized as mentioned in this section shall be deemed to be a public servant within the meaning of the Indian Penal Code.

15. Subject to such rules as the Chief Commissioner may from time to time, with the previous sanction of the Governor General in

Council, prescribe in this behalf, the Deputy Commissioners of Rangoon and Shwaygin shall prepare lists of persons residing in the neighbourhood of the canal in the said districts respectively and liable to be required under section fourteen to assist as aforesaid, and may from time to time add to or alter such list or any part thereof.

16. All persons labouring or detained for the purpose of labouring in compliance with a requisition made under section fourteen, or whose materials may be taken under that section, shall, as soon as may be reasonably practicable, be paid by the Canal Officer for their labour and detention, or for such materials (as the case may be), at a rate not being less than twenty-five per cent. above the highest market-rates for similar labour or materials for the time being prevailing in the neighbourhood.

Any dispute arising between the Canal Officer and any person as to the amount to be paid to such person under this section may be referred by either party to the Deputy Commissioner, whose decision thereon shall be final.

17. Whenever, from the removal, under section fourteen, of any trees, bamboos or other materials, any damage over and above the price payable for such materials results directly to any person, the Canal Officer shall pay to such person such sum as may be agreed upon as compensation for such damage. In case of dispute as to the amount so to be paid, either party may refer such dispute to the Deputy Commissioner, whose decision thereon shall be final.

Offences and Penalties.

18. Whoever, without proper authority and voluntarily, does any of the acts following, that is to say:—

- (a) damages, alters or obstructs the canal;
- (b) interferes with, increases or diminishes the supply of water in, or the flow of water from, through, over or under the canal;
- (c) interferes with or alters the flow of water in any river or stream, so as to endanger or damage the canal or render it less useful;
- (d) corrupts or fouls the water of the canal, so as to render it less fit for the purposes for which it is ordinarily used;
- (e) causes any vessel to enter or navigate, or to remain at any place in, the canal contrary to the rules for the time being prescribed by the Chief Commissioner for entering, navigating or remaining in the canal;
- (f) while navigating the canal, neglects to take proper precautions to prevent injury to the canal and to vessels therein;
- (g) being a person liable to labour under section fourteen, refuses or neglects without reasonable cause so to labour;
- (h) destroys or moves any land-mark, level-mark or water-gauge fixed by the authority of a Canal Officer;
- (i) passes, or causes animals or vehicles to pass, on or across any of the works, banks or channels of the canal contrary to rules made under this

Act, after he has been desired by a Canal Office to desist therefrom; or

(j) pastures any animals on the banks of the canal or knowingly suffers any animals belonging to him or under his charge to graze on such banks;

shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.

Nothing herein contained shall prevent any person from being prosecuted under any other law for any offence punishable under this Act: provided that no person shall be punished twice for the same offence.

19. Any fine imposed under this Act upon the owner of any vessel, or the servant or agent of such owner, or any other person in charge of a vessel, for any offence in respect of the navigation of such vessel, may be recovered either in the manner prescribed by the Code of Criminal Procedure, or, if the Magistrate imposing the fine so directs, as though it were a charge under this Act due in respect of such vessel.

20. Any person duly authorized in this behalf under section three may remove from the lands or buildings belonging to the canal, or may arrest without a warrant, and take forthwith before a Magistrate or to the nearest Police-station, to be dealt with according to law, any person who, within his view, commits any of the offences mentioned in clauses (a), (b) and (c) of section eighteen.

Power to make Rules.

21. The Chief Commissioner may, subject to the control of the Governor General in Council, from time to time make rules consistent with this Act to regulate the following matters:—

- (a) the navigation of the canal;
- (b) the proceedings of any officer who, under any provision of this Act, is required or empowered to take action in any matter;
- (c) the amount of any tolls leviable under this Act; and
- (d) generally, to carry out the provisions of this Act.

The Chief Commissioner may, in making any such rule, attach to the breach of it the penalty specified in section eighteen.

Such rules shall be published in the *British Burma Gazette*, and shall thereupon have the force of law.

Validation of past proceedings.

22. Anything heretofore done which might legally have been done if this Act had been in force shall be deemed to have been done in accordance with law.

D. FITZPATRICK,
Secy. to the Govt. of India.



The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JANUARY 15, 1881.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 26th December, 1880, and is hereby promulgated for general information:—

ACT NO. XVI OF 1880.

An Act to regulate the Traffic on the Madras Irrigation and Canal Company's Canal.

WHEREAS, by the twenty-seventh clause of an Indenture made on the third day of June, one thousand eight hundred and sixty-three, between the Secretary of State for India in Council of the one part, and the Madras Irrigation and Canal Company (hereinafter referred to as "the Company") of the other part, it was, amongst other things, provided that the Company should be authorized and empowered to charge such tolls for navigation, and such fares or rates for the conveyance of passengers, animals and goods, as should not exceed the rates, tolls or fares which should be defined and sanctioned by an Act of the Indian legislature; and that the Company should not in any case charge any higher tolls, fares or rates whatsoever; and whereas it is expedient to define and sanction, for the purposes of the said clause, fares and rates for the conveyance of passengers, animals and goods;

And whereas it is also expedient to empower the Company to make rules for the conveyance of passengers, animals and goods upon, and the use, management and working of, its canal; It is hereby enacted as follows:—

Short title.

Commencement.

1. This Act may be called "The Madras Irrigation and Canal Company's Act, 1880;" and it shall come into force at once.

2. The fares and rates specified in the schedule Fares and rates for hereto annexed shall be conveyance of passen- deemed to be the fares and gers and goods. rates defined and sanctioned for the purposes of the said clause.

Company empowered to make working rules for its canal.

3. The Company may, from time to time, make rules for the following purposes,

that is to say:—

(a) for licensing vessels (other than those of the Company) to navigate the canal and for registering vessels so licensed and denoting upon each its carrying capacity;

(b) for fixing the maximum number of passengers or animals, and the maximum amount of goods, which vessels navigating the canal may carry; and

(c) generally for regulating the traffic upon, and the use and management of all vessels upon, the canal.

4. Any such rule may contain a provision that Penalty for breach of any person committing a breach of it shall be liable to a fine which may extend to fifty rupees, or, in default of payment of such fine, to simple imprisonment for a term which may extend to one month.

5. All such rules shall, when sanctioned by the Notification of rules. Governor of Fort St. George in Council and published in the *Fort St. George Gazette*, have the force of law.

Power to cancel rules. The said Governor in Council may at any time cancel any such rule.

6. A copy of this Act and the rules made Copy and translation of Act, &c., to be shown at stations and on vessels. hereunder, and of the Time-table and Tariff of Charges which may from time to time be observed for the Company's vessels navigating the canal, shall be exhibited, both in English and in Telugu, in some conspicuous place at each station of the canal, and

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 1st January, 1881, and is hereby promulgated for general information :—

ACT No. I OF 1881.

An Act for the determination of claims to Táj Mahal's pension.

WHEREAS, by a treaty dated the 24th Shabán 1244, Hijri, corresponding with the first day of March, 1829, and made between His Majesty the King of Oudh and the Government of the Hon'ble the East India Company, it was (amongst other things) agreed that a certain pension therein specified should be paid by the English Government to one Nawáb Táj Mahal therein named, and that if she should die leaving an heir or heirs the English Government might at its election continue as before such pension to her heirs, or make over to them the principal sum proportionate to such pension according to the rate thereinbefore mentioned;

and whereas the said Táj Mahal is now dead and doubts exist as to who are her heirs, and it is therefore expedient to provide for the appointment of a person to represent her estate for the purpose of receiving such pension;

and whereas the Secretary of State for India in Council is desirous of making over to the persons entitled to receive the said pension the principal sum proportionate thereto as provided in the said treaty, and it is expedient to empower the said Secretary of State in Council to capitalize the said pension pending the appointment of a person as aforesaid; It is hereby enacted as follows :—

1. This Act may be called "Táj Mahal's Pension Act, 1881"; and it shall come into force at once.

Short title.
Commencement.

2. Any person considering himself entitled to the said pension or any portion thereof may apply in writing to the Court of the District Judge of Lucknow (hereinafter called the District Court) for a certificate authorizing him to receive the same.

The application shall be in such form and shall contain such particulars as the Governor General in

Certificate to be obtained by application to the District Court.

Form of application.

Council may from time to time, by rules to be published in the *Gazette of India*, direct.

3. The District Court shall fix a day for hearing the application, and shall cause to be stuck up in the court-house, and otherwise published or made known at the expense of the applicant in such manner as it thinks fit, a copy of the application, with a notice stating the time and place at which it will be heard, and calling upon all persons claiming to have a better right than the applicant to the grant of the certificate to come in and oppose the application.

4. On the day so fixed, or any subsequent day to which the Court may adjourn the hearing, the Court shall, if no person claiming to have a better right than the applicant to the grant of the certificate is present, hear the application; and if, after recording the evidence produced by the applicant in support of his claim, and making such further enquiry (if any) as it thinks necessary, the Court is of opinion that the applicant has established his claim, it shall make an order for granting him a certificate.

In the event of the applicant not having, in the opinion of the Court, established his claim, it shall make an order dismissing his application.

5. In any case in which any person claiming to have a better right than the applicant to the grant of the certificate is present, the Court shall, after hearing the application and recording the evidence produced by the applicant in support of his claim, hear such person and record the evidence produced by him in support of his claim, and shall then, after making such further enquiry (if any) as it thinks necessary, determine which of the parties (if either) has established his claim to the certificate, and shall make an order for granting the same accordingly.

In the event of neither party having, in the opinion of the Court, established his claim, the Court shall make an order dismissing both the application and the counter-claim.

6. When any order dismissing an application under section four, or any order under section five, is made, an appeal by any party to the proceedings, who deems himself aggrieved by such order, shall lie to the High Court, which may make an order dismissing such appeal or granting a certificate, or otherwise reversing or varying the order of the District Court, as it thinks fit.

Appeal to the High Court.

7. The period of limitation for an appeal under section six shall be sixty days from the date of the order appealed against.

Period of limitation for appeal.

In computing such period, and in all respects not herein specified, the limitation of such appeals shall be governed by the provisions of the Indian Limitation Act, 1877.

8. A certificate granted under this Act shall specify the payments which the person to whom it is granted is entitled to receive, and shall contain such other particulars as the Governor General in Council may from time to time prescribe in this behalf.

9. Every certificate granted under section four, or section six,

Effect of certificate.

and every certificate granted under section five, when the period of limitation fixed by section seven has expired without an appeal having been preferred against the order granting such certificate, shall, while it remains in force, be conclusive evidence against the said Secretary of State in Council of the right of the person to whom it has been granted to receive the payments specified therein, and shall, unless or until it is rescinded and the authority rescinding it has given to the said Secretary of State in Council notice of such rescission, empower such person to give to the said Secretary of State in Council a full discharge for any such payment.

10. The said Secretary of State in Council shall not be bound to pay the said pension or any portion thereof to any person claiming the same, except on the production by such person of a certificate, granted in the manner herein provided, authorizing him to receive the same.

11. Nothing herein contained shall be deemed to affect the right of any person to recover by suit from the holder of a certificate granted under this Act the amount of any payment made to him in virtue of such certificate.

Right of third parties against holder of certificate saved.

12. The Court ordering any certificate to be granted under this Act may, if it thinks fit, direct that before such certificate is granted, such security (if any) as it thinks necessary shall be taken from the person to whom such certificate is to be granted, for his rendering an account of the payments to be received by him in virtue of such certificate to any person who may be entitled to recover from him in manner referred to in section eleven the whole or any part of such payments.

Court may take security from grantee of certificate.

13. The District Court may, on the application of any person who has recovered by suit from the holder of a certificate granted under this Act the amount of any payment made to him in virtue of such certificate, grant a certificate to such person in supersession, wholly or in part, as the case may be, of the former certificate.

No appeal shall lie from any order under this section.

section.

On the grant of a fresh certificate under this section the former certificate shall be deemed to be rescinded wholly or in part, as the case may be.

Effect of fresh certificate.

14. In all proceedings under this Act the District Court and the High Court shall, as far as may be and except as herein otherwise provided, exercise the powers and follow the procedure conferred on, and prescribed for, a Court of first instance and a Court of appeal respectively by the Code of Civil Procedure: Provided that nothing contained in Chapter XLV of the said Code shall apply to any order made in any such proceeding.

15. The provisions of section thirteen of the said Code shall apply to all cases under section five of this Act in which the question of heirship to the said Tāj Mahal, having been directly and substantially in issue in a suit in a Court of competent jurisdiction between the claimants, or between parties under whom they or any of them claim, litigating under the same title, has been heard and finally determined by such Court.

Matters decided in civil suits to be treated as *res judicata*.

16. All payments heretofore made by or on behalf of the said Secretary of State in Council under the said treaty shall be deemed to have been made in accordance with law: Provided that nothing in this section shall affect the right of any person to recover by suit the amount of any such payment from the person to whom the same has been made.

Indemnity as to payments already made.

17. The said Secretary of State in Council may, pending the grant of a certificate as hereinbefore provided, invest in securities of the Government of India the principal sum proportionate to the pension of the said Tāj Mahal according to the rate mentioned in the said treaty, and may invest the income from time to time resulting from such securities in like securities.

And, thereupon, all further claim to such pension and income shall cease, and the persons obtaining a certificate in manner hereinbefore provided shall be entitled, in lieu of such pension and income, to the securities aforesaid, together with the uninvested income (if any) which from the date of making such investment has resulted from such securities.

On capitalization, all claim to pension barred.

18. The said Secretary of State in Council shall, without unnecessary delay, invest, in securities of the Government of India, all arrears of such pension due at the time of the passing of this Act, and all such arrears falling due thereafter, and before the investment of the principal sum aforesaid. When any such arrears have been so invested, all further claim in respect thereof shall cease, and the persons obtaining a certificate in manner hereinbefore provided shall, in lieu of such arrears, be entitled to the securities in which they have been invested and the income resulting therefrom.

Arrears of pension accruing before capitalization to be invested.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 1st January, 1881, and is hereby promulgated for general information:—

ACT No. II OF 1881.

An Act to regulate the Navigation of the Pegu and Sittang Canal, and to provide for the protection of the said Canal and the execution of works necessary for its maintenance.

WHEREAS the Government has constructed a canal connecting the waters of the Pegu and Sittang rivers, partly by digging artificial channels and partly by using the water-bed of the Ka-ya-zoo creek; and whereas it is necessary to provide for the navigation, protection and maintenance of the said canal; It is hereby enacted as follows:

Preamble.

Short title.

1. This Act may be called "The Pegu and Sittang Canal Act, 1881";

Commencement.

and it shall come into force at once.

Interpretation-clause.

2. In this Act, unless there is something repugnant in the subject or context,—

"The canal."

(1) "The canal" means the Pegu and Sittang Canal,

and includes—

(a) all channels and reservoirs now or hereafter constructed, maintained or controlled by the Government for the supply or storage of water in connection with the said canal, or supplemental thereto, between the Sittang lock, situated at Myit-kyo, on the Sittang river, and the Pegu lock, situated near the village of Sin-o-bo, on the Pegu river;

(b) all works, embankments, structures and supply and escape-channels connected with the canal or with the said channels and reservoirs;

(c) all lands occupied by the Government for the purposes of the said canal, and all buildings, machinery, fences, gates and other erections, trees, crops, plantations or other produce occupied by, or belonging to, the Government, upon such lands:

"Vessel."

(2) "Vessel" includes boats, rafts, timber and other

floating bodies:

(3) "Canal Officer" means an officer appointed under this Act by the

"Canal Officer."

Chief Commissioner to exercise control over the canal or any part thereof:

(4) "Superintending Canal Officer" means an officer exercising general control over the canal.

"Superintending Canal Officer."

3. The Chief Commissioner may from time to time declare, by notification in the *British Burma Gazette*, the officers by whom and the local limits within which, all or any of the powers or duties hereinafter conferred or imposed shall be exercised or performed.

Navigation of the Canal.

4. Such tolls as the Chief Commissioner may from time to time, by notification in the *British Burma Gazette*, direct, shall be levied from all vessels entering or navigating the canal.

5. Any vessel entering or navigating the canal contrary to the rules made in that behalf under this Act by the Chief Commissioner, or so as to cause danger to the canal or to the other vessels therein, may be removed or detained, or both removed and detained, by a Canal Officer, or by any other person duly authorized under section three in that behalf.

The owner of any vessel causing damage to the canal, or removed or detained under this section, shall be liable to pay to the Government such charge as the Canal Officer, with the approval of the Superintending Canal Officer, determines to be necessary to defray the cost of repairing such damage, or of such removal or detention, as the case may be.

6. If any toll or charge due under this Act in respect of any vessel is not paid on demand to the person authorized to collect the same, the Canal Officer may seize and detain such vessel and the furniture thereof, until such toll or charge, together with all expenses arising from such seizure and detention, is paid in full.

7. If any charge due to the Government in respect of any cargo or goods carried in a Government vessel on the canal, or stored on or in lands or warehouses occupied for the purposes of the canal, is not paid on demand to the person authorized to collect the same, the Canal Officer may seize such cargo or goods, and detain it or them until the charge so due, together with all expenses arising from such seizure and detention, is paid in full.

8. Within a reasonable time after any seizure under section six or section seven, the Canal Officer shall give notice to

Power to sell property seized under sections 6 and 7.

the owner or person in charge of the property seized that it, or such portion of it as may be necessary, will, on a day to be named in the notice, but not sooner than twenty-one days from the date of the notice, be sold in satisfaction of the claim on account of which such property is detained, unless the claim is discharged before the day so named;

and if such claim is not so discharged, the Canal Officer may, on such day, sell the property seized, or such part thereof as may be necessary to yield the amount due, together with the expenses of such seizure and sale.

The residue (if any) of such property, and of the proceeds of the sale, shall be made over to the owner or person in charge of the property seized.

9. If any vessel is found abandoned in the

Procedure in respect of vessels abandoned and goods unclaimed. canal, or any cargo or goods carried in a Government vessel on the canal, or stored on or in lands or warehouses occupied for the purposes of the canal, is or are left unclaimed for a period of two months, the Canal Officer may take possession of the same.

The officer so taking possession shall publish a notice, in such manner as the Chief Commissioner may from time to time by rule direct, that if such vessel and its contents, or such cargo or goods, is or are not claimed previously to a day to be named in the notice, not sooner than thirty days from the date of such notice, he will sell the same; and if such vessel, contents, cargo or goods is or are not so claimed, he may, at any time after the day named in the notice, proceed to sell the same.

The said vessel and its contents, and the said Disposal of proceeds of cargo or goods, if unsold, sale. or, if a sale has taken place, the proceeds of the sale, after paying all tolls and charges due in respect of the vessel, cargo or goods and all expenses incurred by the Canal Officer on account of the taking possession and sale, shall be made over to the owner of the same, when his ownership is established to the satisfaction of the Canal Officer.

If the Canal Officer is doubtful to whom such property or proceeds should be made over, he may direct the property to be sold and the proceeds to be paid into the district-treasury, there to be held until the right thereto is decided by a Court of competent jurisdiction.

Maintenance of the Canal.

10. A Canal Officer, empowered by the Com-

Power of Canal Officer to enter on land and remove obstructions, &c. missioner of the Division generally or specially in this behalf, or any other person acting under the general or special order of such officer, may enter on any land in the neighbourhood of the canal and remove any obstructions, and may close any channels and do any other thing necessary or convenient for the maintenance of the canal.

11. Any such officer or other person may,

Power to enter and for the purposes of any survey, &c. enquiry relating to any part of the canal under the charge of such officer, enter upon any such lands, and undertake surveys

or levels thereon, and dig and bore into the sub-soil;

and make and set up suitable land-marks, level-marks and water-gauges;

and do all other acts necessary for such purposes;

and, where otherwise such enquiry cannot be completed, such officer or other person may cut

Power to clear land. down and clear away any part of any standing crop, fence or jungle.

12. In case of any accident happening or be-

ing reasonably apprehended to the canal, any such officer or other person may enter upon any such lands, and may execute all works which may be necessary for the purpose of repairing or preventing such accident.

13. In every case of entry under section ten,

Compensation for damage caused by entry. eleven or twelve, the Canal Officer shall tender, as soon as may be reasonably practicable, to the owner or occupiers of the land compensation for any damage which may be occasioned by such entry and by any proceeding under such section.

In case of dispute as to the sufficiency of the amount so tendered, the Canal Officer shall forthwith refer the same for decision by the Deputy Commissioner, whose decision thereon shall be final.

Obtaining Labour and Materials for Work on the Canal.

14. Whenever it appears to a Canal Officer

Procedure for obtaining labour and materials for works urgently required. that, unless some work is immediately executed, such serious damage will happen to the canal as will cause sudden and extensive public injury,

and that the labourers or materials necessary for the proper execution of such work cannot be obtained in the ordinary manner within the time that can be allowed for the execution of such work so as to prevent such damage,

such officer may, by order under his hand, direct that the provisions of this section shall be put into operation for the execution of such work, and thereupon—

(a) every able-bodied person whose name appears in the list hereinafter mentioned shall, if required so to do by such officer or by any person authorized by him in this behalf, be bound to assist in the execution of such work by labouring thereon as such officer or other person directs, and

(b) such officer or any person authorized by him in this behalf may enter into and upon any immoveable property in the neighbourhood of the Canal, and take possession of, appropriate and remove any trees or bamboos, whether standing or not, and any timber, mats, ropes or other materials found in or upon such property, and use the same for the purposes of such work.

Every person authorized as mentioned in this section shall be deemed to be a public servant within the meaning of the Indian Penal Code.

15. Subject to such rules as the Chief Commis-

Deputy Commissioner to prepare list of persons liable to serve. sioner may from time to time, with the previous sanction of the Governor General in

Council, prescribe in this behalf, the Deputy Commissioners of Rangoon and Shwaygin shall prepare lists of persons residing in the neighbourhood of the canal in the said districts respectively and liable to be required under section fourteen to assist as aforesaid, and may from time to time add to or alter such list or any part thereof.

16. All persons labouring or detained for the purpose of labouring in compliance with a requisition made under section fourteen, or whose materials may be taken under that section, shall, as soon as may be reasonably practicable, be paid by the Canal Officer for their labour and detention, or for such materials (as the case may be), at a rate not being less than twenty-five per cent. above the highest market-rates for similar labour or materials for the time being prevailing in the neighbourhood.

Any dispute arising between the Canal Officer and any person as to the amount to be paid to such person under this section may be referred by either party to the Deputy Commissioner, whose decision thereon shall be final.

17. Whenever, from the removal, under section fourteen, of any trees, bamboos or other materials, any damage done in taking away such materials, any damage over and above the price payable for such materials results directly to any person, the Canal Officer shall pay to such person such sum as may be agreed upon as compensation for such damage. In case of dispute as to the amount so to be paid, either party may refer such dispute to the Deputy Commissioner, whose decision thereon shall be final.

Offences and Penalties.

18. Whoever, without proper authority and voluntarily, does any of the acts following, that is to say:—

- (a) damages, alters or obstructs the canal;
- (b) interferes with, increases or diminishes the supply of water in, or the flow of water from, through, over or under the canal;
- (c) interferes with or alters the flow of water in any river or stream, so as to endanger or damage the canal or render it less useful;
- (d) corrupts or fouls the water of the canal, so as to render it less fit for the purposes for which it is ordinarily used;
- (e) causes any vessel to enter or navigate, or to remain at any place in, the canal contrary to the rules for the time being prescribed by the Chief Commissioner for entering, navigating or remaining in the canal;
- (f) while navigating the canal, neglects to take proper precautions to prevent injury to the canal and to vessels therein;
- (g) being a person liable to labour under section fourteen, refuses or neglects without reasonable cause so to labour;
- (h) destroys or moves any land-mark, level-mark or water-gauge fixed by the authority of a Canal Officer;
- (i) passes, or causes animals or vehicles to pass, on or across any of the works, banks or channels of the canal contrary to rules made under this

Act, after he has been desired by a Canal Officer to desist therefrom; or

(j) pastures any animals on the banks of the canal or knowingly suffers any animals belonging to him or under his charge to graze on such banks;

shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.

Nothing herein contained shall prevent any person from being prosecuted under any other law for any offence punishable under this Act: provided that no person shall be punished twice for the same offence.

19. Any fine imposed under this Act upon the owner of any vessel, or the servant or agent of such owner, or any other person in charge of a vessel, for any offence in respect of the navigation of such vessel, may be recovered either in the manner prescribed by the Code of Criminal Procedure, or, if the Magistrate imposing the fine so directs, as though it were a charge under this Act due in respect of such vessel.

20. Any person duly authorized in this behalf under section three may remove from the lands or buildings belonging to the canal, or may arrest without a warrant, and take forthwith before a Magistrate or to the nearest Police-station, to be dealt with according to law, any person who, within his view, commits any of the offences mentioned in clauses (a), (b) and (c) of section eighteen.

Power to make Rules.

21. The Chief Commissioner may, subject to the control of the Governor General in Council, from time to time make rules consistent with this Act to regulate the following matters:—

- (a) the navigation of the canal;
- (b) the proceedings of any officer who, under any provision of this Act, is required or empowered to take action in any matter;
- (c) the amount of any tolls leviable under this Act; and
- (d) generally, to carry out the provisions of this Act.

The Chief Commissioner may, in making any such rule, attach to the breach of it the penalty specified in section eighteen.

Such rules shall be published in the *British Burma Gazette*, and shall thereupon have the force of law.

Validation of past proceedings.

22. Anything heretofore done which might legally have been done if this Act had been in force shall be deemed to have been done in accordance with law.

D. FITZPATRICK,
Secy. to the Govt. of India,



The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, JANUARY 22, 1881.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 1st January, 1881, and is hereby promulgated for general information:—

ACT NO. I OF 1881.

An Act for the determination of claims to Táj Mahal's pension.

WHEREAS, by a treaty dated the 24th Shabán 1244, Hijri, corresponding with the first day of March, 1829, and made between His Majesty the King of Oudh and the Government of the Hon'ble the East India Company, it was (amongst other things) agreed that a certain pension therein specified should be paid by the English Government to one Nawáb Táj Mahal therein named, and that if she should die leaving an heir or heirs the English Government might at its election continue as before such pension to her heirs, or make over to them the principal sum proportionate to such pension according to the rate thereinbefore mentioned;

and whereas the said Táj Mahal is now dead and doubts exist as to who are her heirs, and it is therefore expedient to provide for the appointment of a person to represent her estate for the purpose of receiving such pension;

and whereas the Secretary of State for India in Council is desirous of making over to the persons entitled to receive the said pension the principal sum proportionate thereto as provided in the said treaty, and it is expedient to empower the said Secretary of State in Council to capitalize the said pension pending the appointment of a person as aforesaid; It is hereby enacted as follows:—

1. This Act may be called "Táj Mahal's Pension Act, 1881"; and it shall come into force at once.

Short title.
Commencement.

2. Any person considering himself entitled to the said pension or any portion thereof may apply in writing to the Court of the District Judge of Lucknow (hereinafter called the

District Court) for a certificate authorizing him to receive the same.

The application shall be in such form and shall contain such particulars as the Governor General in Council may from time to time, by rules to be published in the *Gazette of India*, direct.

3. The District Court shall fix a day for hearing the application, and shall cause to be stuck up in the court-house, and otherwise published or made known at the expense of the applicant in such manner as it thinks fit, a copy of the application, with a notice stating the time and place at which it will be heard, and calling upon all persons claiming to have a better right than the applicant to the grant of the certificate to come in and oppose the application.

4. On the day so fixed, or any subsequent day to which the Court may adjourn the hearing, the Court shall, if no person claiming to have a better right than the applicant to the grant of the certificate is present, hear the application; and if, after recording the evidence produced by the applicant in support of his claim, and making such further enquiry (if any) as it thinks necessary, the Court is of opinion that the applicant has established his claim, it shall make an order for granting him a certificate.

In the event of the applicant not having, in the opinion of the Court, established his claim, it shall make an order dismissing his application.

5. In any case in which any person claiming to have a better right than the applicant to the grant of the certificate is present, the Court shall, after hearing the application and recording the evidence produced by the applicant in support of his claim, hear such person and record the evidence produced by him in support of his claim, and shall then, after making such further enquiry (if any) as it thinks necessary, determine which of the parties (if either) has established his claim to the certificate, and shall make an order for granting the same accordingly.

In the event of neither party having, in the opinion of the Court, established his claim, the Court shall make an order dismissing both the application and the counter-claim.

6. When any order dismissing an application under section four, or any order under section five, is made, an appeal by any party to the proceedings, who deems himself aggrieved by such order, shall lie to the High Court, which may make an order dismissing such appeal or granting a certificate, or otherwise reversing or varying the order of the District Court, as it thinks fit.

7. The period of limitation for an appeal under section six shall be sixty days from the date of the order appealed against.

In computing such period, and in all respects not herein specified, the limitation of such appeals shall be governed by the provisions of the Indian Limitation Act, 1877.

8. A certificate granted under this Act shall specify the payments which the person to whom it is granted is entitled to receive, and shall contain such other particulars as the Governor General in Council may from time to time prescribe in this behalf.

9. Every certificate granted under section four, or section six,

and every certificate granted under section five, when the period of limitation fixed by section seven has expired without an appeal having been preferred against the order granting such certificate, shall, while it remains in force, be conclusive evidence against the said Secretary of State in Council of the right of the person to whom it has been granted to receive the payments specified therein, and shall, unless or until it is rescinded and the authority rescinding it has given to the said Secretary of State in Council notice of such rescission, empower such person to give to the said Secretary of State in Council a full discharge for any such payment.

10. The said Secretary of State in Council shall not be bound to pay the said pension or any portion thereof to any person claiming the same, except on the production by such person of a certificate, granted in the manner herein provided, authorizing him to receive the same.

11. Nothing herein contained shall be deemed to affect the right of any person to recover by suit from the holder of a certificate granted under this Act the amount of any payment made to him in virtue of such certificate.

12. The Court ordering any certificate to be granted under this Act may, if it thinks fit, direct that before such certificate is granted, such security (if any) as it thinks necessary shall be taken from the person to whom such certificate is to be granted, for his rendering an account of the payments to be received by him in virtue of such certificate to any person who may be entitled to recover from him in manner referred to in section eleven the whole or any part of such payments.

13. The District Court may, on the application of any person who has recovered by suit from the holder of a certificate granted under this Act the amount of any payment made to him in virtue of such certificate, grant a certificate to

such person in supersession, wholly or in part, as the case may be, of the former certificate.

No appeal shall lie from any order under this section.

On the grant of a fresh certificate under this section the former certificate shall be deemed to be rescinded wholly or in part, as the case may be.

14. In all proceedings under this Act the District Court and the High Court shall, as far as may be and except as herein otherwise provided, exercise the powers and follow the procedure conferred on, and prescribed for, a Court of first instance and a Court of appeal respectively by the Code of Civil Procedure: Provided that nothing contained in Chapter XLV of the said Code shall apply to any order made in any such proceeding.

15. The provisions of section thirteen of the said Code shall apply to all cases under section five of this Act in which the question of heirship to the said Tāj Mahal, having been directly and substantially in issue in a suit in a Court of competent jurisdiction between the claimants, or between parties under whom they or any of them claim, litigating under the same title, has been heard and finally determined by such Court.

16. All payments heretofore made by or on behalf of the said Secretary of State in Council under the said treaty shall be deemed to have been made in accordance with law: Provided that nothing in this section shall affect the right of any person to recover by suit the amount of any such payment from the person to whom the same has been made.

17. The said Secretary of State in Council may, pending the grant of a certificate as hereinbefore provided, invest in securities of the Government of India the principal sum proportionate to the pension of the said Tāj Mahal according to the rate mentioned in the said treaty, and may invest the income from time to time resulting from such securities in like securities.

And, thereupon, all further claim to such pension and income shall cease, and the persons obtaining a certificate in manner hereinbefore provided shall be entitled, in lieu of such pension and income, to the securities aforesaid, together with the uninvested income (if any) which from the date of making such investment has resulted from such securities.

18. The said Secretary of State in Council shall, without unnecessary delay, invest, in securities of the Government of India, all arrears of such pension due at the time of the passing of this Act, and all such arrears falling due thereafter, and before the investment of the principal sum aforesaid. When any such arrears have been so invested, all further claim in respect thereof shall cease, and the persons obtaining a certificate in manner hereinbefore provided shall, in lieu of such arrears, be entitled to the securities in which they have been invested and the income resulting therefrom.

D. FITZPATRICK,
Secy. to the Govt. of India.

IMPERIAL

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 1st January, 1881, and is hereby promulgated for general information:—

ACT No. II OF 1881.

An Act to regulate the Navigation of the Pegu and Sittang Canal, and to provide for the protection of the said Canal and the execution of works necessary for its maintenance.

WHEREAS the Government has constructed a canal connecting the waters of the Pegu and Sittang rivers, partly by digging artificial channels and partly by using the water-bed of the Ka-ya-zoo creek; and whereas it is necessary to provide for the navigation, protection and maintenance of the said canal; It is hereby enacted as follows:

Preamble.

Preliminary.

Short title.

1. This Act may be called "The Pegu and Sittang Canal Act, 1881"; and it shall come into force at once.

Commencement.

Interpretation-clause.

2. In this Act, unless there is something repugnant in the subject or context,—

"The canal."

(1) "The canal" means the Pegu and Sittang Canal,

and includes—

(a) all channels and reservoirs now or hereafter constructed, maintained or controlled by the Government for the supply or storage of water in connection with the said canal, or supplemental thereto, between the Sittang lock, situated at Myit-kyo, on the Sittang river, and the Pegu lock, situated near the village of Sin-o-bo, on the Pegu river;

(b) all works, embankments, structures and supply and escape-channels connected with the canal or with the said channels and reservoirs;

(c) all lands occupied by the Government for the purposes of the said canal, and all buildings, machinery, fences, gates and other erections, trees, crops, plantations or other produce occupied by, or belonging to, the Government, upon such lands:

"Vessel."

(2) "Vessel" includes boats, rafts, timber and other

floating bodies:

(3) "Canal Officer" means an officer appointed under this Act by the Chief Commissioner to exercise control over the canal or any part thereof:

(4) "Superintending Canal Officer" means an officer exercising general control over the canal.

"Superintending Canal Officer."

3. The Chief Commissioner may from time to time declare, by notification in the *British Burma Gazette*, the officers by whom and the local limits within which, all or any of the powers or duties hereinafter conferred or imposed shall be exercised or performed.

Navigation of the Canal.

4. Such tolls as the Chief Commissioner may from time to time, by notification in the *British Burma Gazette*, direct, shall be levied from all vessels entering or navigating the canal.

5. Any vessel entering or navigating the canal contrary to the rules made in that behalf under this Act by the Chief Commissioner, or so as to cause danger to the canal or to the other vessels therein, may be removed or detained, or both removed and detained, by a Canal Officer, or by any other person duly authorized under section three in that behalf.

The owner of any vessel causing damage to the canal, or removed or detained under this section, shall be liable to pay to the Government such charge as the Canal Officer, with the approval of the Superintending Canal Officer, determines to be necessary to defray the cost of repairing such damage, or of such removal or detention, as the case may be.

6. If any toll or charge due under this Act in respect of any vessel is not paid on demand to the person authorized to collect the same, the Canal Officer may seize and detain such vessel and the furniture thereof, until such toll or charge, together with all expenses arising from such seizure and detention, is paid in full.

7. If any charge due to the Government in respect of any cargo or goods carried in a Government vessel on the canal, or stored on or in lands or warehouses occupied for the purposes of the canal, is not paid on demand to the person authorized to collect the same, the Canal Officer may seize such cargo or goods, and detain it or them until the charge so due, together with all expenses arising from such seizure and detention, is paid in full.

8. Within a reasonable time after any seizure under section six or section seven, the Canal Officer shall give notice to

Power to sell property seized under sections 6 and 7.

the owner or person in charge of the property seized that it, or such portion of it as may be necessary, will, on a day to be named in the notice, but not sooner than twenty-one days from the date of the notice, be sold in satisfaction of the claim on account of which such property is detained, unless the claim is discharged before the day so named;

and if such claim is not so discharged, the Canal Officer may, on such day, sell the property seized, or such part thereof as may be necessary to yield the amount due, together with the expenses of such seizure and sale.

The residue (if any) of such property, and of the proceeds of the sale, shall be made over to the owner or person in charge of the property seized.

9. If any vessel is found abandoned in the canal, or any cargo or goods carried in a Government vessel on the canal, or stored on or in lands or warehouses occupied for the purposes of the canal, is or are left unclaimed for a period of two months, the Canal Officer may take possession of the same.

The officer so taking possession shall publish a notice, in such manner as the Chief Commissioner may from time to time by rule direct, that if such vessel and its contents, or such cargo or goods, is or are not claimed previously to a day to be named in the notice, not sooner than thirty days from the date of such notice, he will sell the same; and if such vessel, contents, cargo or goods is or are not so claimed, he may, at any time after the day named in the notice, proceed to sell the same.

The said vessel and its contents, and the said sale. Disposal of proceeds of cargo or goods, if unsold, or, if a sale has taken place, the proceeds of the sale, after paying all tolls and charges due in respect of the vessel, cargo or goods and all expenses incurred by the Canal Officer on account of the taking possession and sale, shall be made over to the owner of the same, when his ownership is established to the satisfaction of the Canal Officer.

If the Canal Officer is doubtful to whom such property or proceeds should be made over, he may direct the property to be sold and the proceeds to be paid into the district-treasury, there to be held until the right thereto is decided by a Court of competent jurisdiction.

Maintenance of the Canal.

10. A Canal Officer, empowered by the Commissioner of the Division generally or specially in this behalf, or any other person acting under the general or special order of such officer, may enter on any land in the neighbourhood of the canal and remove any obstructions, and may close any channels and do any other thing necessary or convenient for the maintenance of the canal.

11. Any such officer or other person may, for the purposes of any enquiry relating to any part of the canal under the charge of such officer, enter upon any such lands, and undertake surveys

or levels thereon, and dig and bore into the sub-soil;

and make and set up suitable land-marks, level-marks and water-gauges;

and do all other acts necessary for such purposes;

and, where otherwise such enquiry cannot be completed, such officer or other person may cut down and clear away any part of any standing crop, fence or jungle.

12. In case of any accident happening or being reasonably apprehended to the canal, any such officer or other person may enter upon any such lands, and may execute all works which may be necessary for the purpose of repairing or preventing such accident.

13. In every case of entry under section ten, Compensation for damage eleven or twelve, the Canal Officer shall tender, as soon as may be reasonably practicable, to the owner or occupiers of the land compensation for any damage which may be occasioned by such entry and by any proceeding under such section.

In case of dispute as to the sufficiency of the amount so tendered, the Canal Officer shall forthwith refer the same for decision by the Deputy Commissioner, whose decision thereon shall be final.

Obtaining Labour and Materials for Work on the Canal.

14. Whenever it appears to a Canal Officer that, unless some work is labour and materials for immediately executed, works urgently required, such serious damage will happen to the canal as will cause sudden and extensive public injury,

and that the labourers or materials necessary for the proper execution of such work cannot be obtained in the ordinary manner within the time that can be allowed for the execution of such work so as to prevent such damage,

such officer may, by order under his hand, direct that the provisions of this section shall be put into operation for the execution of such work, and thereupon—

(a) every able-bodied person whose name appears in the list hereinafter mentioned shall, if required so to do by such officer or by any person authorized by him in this behalf, be bound to assist in the execution of such work by labouring thereon as such officer or other person directs, and

(b) such officer or any person authorized by him in this behalf may enter into and upon any immoveable property in the neighbourhood of the Canal, and take possession of, appropriate and remove any trees or bamboos, whether standing or not, and any timber, mats, ropes or other materials found in or upon such property, and use the same for the purposes of such work.

Every person authorized as mentioned in this section shall be deemed to be a public servant within the meaning of the Indian Penal Code.

15. Subject to such rules as the Chief Commissioner may from time to time, with the previous sanction of the Governor General in

Deputy Commissioner to prepare list of persons liable to serve.

Council, prescribe in this behalf, the Deputy Commissioners of Rangoon and Shwaygin shall prepare lists of persons residing in the neighbourhood of the canal in the said districts respectively and liable to be required under section fourteen to assist as aforesaid, and may from time to time add to or alter such list or any part thereof.

16. All persons labouring or detained for the purpose of labouring in compliance with a requisition made under section fourteen, or whose materials may be taken under that section, shall, as soon as may be reasonably practicable, be paid by the Canal Officer for their labour and detention, or for such materials (as the case may be), at a rate not being less than twenty-five per cent. above the highest market-rates for similar labour or materials for the time being prevailing in the neighbourhood.

Any dispute arising between the Canal Officer and any person as to the amount to be paid to such person under this section may be referred by either party to the Deputy Commissioner, whose decision thereon shall be final.

17. Whenever, from the removal, under section fourteen, of any trees, bamboos or other materials, any damage over and above the price payable for such materials results directly to any person, the Canal Officer shall pay to such person such sum as may be agreed upon as compensation for such damage. In case of dispute as to the amount so to be paid, either party may refer such dispute to the Deputy Commissioner, whose decision thereon shall be final.

Offences and Penalties.

18. Whoever, without proper authority and voluntarily, does any of the acts following, that is to say:—

- (a) damages, alters or obstructs the canal;
- (b) interferes with, increases or diminishes the supply of water in, or the flow of water from, through, over or under the canal;
- (c) interferes with or alters the flow of water in any river or stream, so as to endanger or damage the canal or render it less useful;
- (d) corrupts or fouls the water of the canal, so as to render it less fit for the purposes for which it is ordinarily used;
- (e) causes any vessel to enter or navigate, or to remain at any place in, the canal contrary to the rules for the time being prescribed by the Chief Commissioner for entering, navigating or remaining in the canal;
- (f) while navigating the canal, neglects to take proper precautions to prevent injury to the canal and to vessels therein;
- (g) being a person liable to labour under section fourteen, refuses or neglects without reasonable cause so to labour;
- (h) destroys or moves any land-mark, level-mark or water-gauge fixed by the authority of a Canal Officer;
- (i) passes, or causes animals or vehicles to pass, on or across any of the works, banks or channels of the canal contrary to rules made under this

Act, after he has been desired by a Canal Officer to desist therefrom; or

(j) pastures any animals on the banks of the canal or knowingly suffers any animals belonging to him or under his charge to graze on such banks;

shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.

Nothing herein contained shall prevent any person from being prosecuted under any other law for any offence punishable under this Act: provided that no person shall be punished twice for the same offence.

19. Any fine imposed under this Act upon the owner of any vessel, or the servant or agent of such owner, or any other person in charge of a vessel, for any offence in respect of the navigation of such vessel, may be recovered either in the manner prescribed by the Code of Criminal Procedure, or, if the Magistrate imposing the fine so directs, as though it were a charge under this Act due in respect of such vessel.

20. Any person duly authorized in this behalf under section three may remove from the lands or buildings belonging to the canal, or may arrest without a warrant, and take forthwith before a Magistrate or to the nearest Police-station, to be dealt with according to law, any person who, within his view, commits any of the offences mentioned in clauses (a), (b) and (c) of section eighteen.

Power to make Rules.

21. The Chief Commissioner may, subject to the control of the Governor General in Council, from time to time make rules consistent with this Act to regulate the following matters:—

- (a) the navigation of the canal;
- (b) the proceedings of any officer who, under any provision of this Act, is required or empowered to take action in any matter;
- (c) the amount of any tolls leviable under this Act; and
- (d) generally, to carry out the provisions of this Act.

The Chief Commissioner may, in making any such rule, attach to the breach of it the penalty specified in section eighteen.

Such rules shall be published in the *British Burma Gazette*, and shall thereupon have the force of law.

Validation of past proceedings.

22. Anything heretofore done which might legally have been done if this Act had been in force shall be deemed to have been done in accordance with law.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 15th January, 1881, and is hereby promulgated for general information:—

ACT No. III OF 1881.

An Act to provide for certain matters relating to Securities of the Government of India.

WHEREAS the Governor General in Council has determined to issue, in respect of the four and a half per cent. loan of 1880, certificates declaring the bearers thereof entitled to the principal sums specified therein, and coupons for the interest payable on such principal sums;

and whereas the Governor General in Council may from time to time desire to issue like certificates, with or without like coupons, in respect of other loans;

and whereas it is expedient to declare the mode in which the title to such certificates and coupons shall be transferable;

and whereas it is also expedient to provide for certain other matters relating to all securities of the Government of India; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Indian Securities Act, 1881"; and shall come into force at once.

Commencement.

2. In this Act, "Government securities" includes promissory notes, debentures, loan-certificates, coupons and all other securities issued by the Government of India, whether before or after the passing of this Act.

3. Whenever the Governor General in Council has issued, in respect of any loan, a certificate declaring the bearer thereof to be entitled to the portion of the loan therein expressed, or a coupon for any amount payable as interest on any portion of such loan, the title to such certificate or coupon may be transferred as if the certificate or coupon were a promissory note payable to bearer;

and, on payment, by or on behalf of the Government, to the bearer of such certificate or coupon, of the amount expressed therein, at or after the date on which it becomes due, the Government shall be discharged as if such certificate or coupon were a promissory note payable to bearer.

4. No notice of any trust in respect of any Government security shall be receivable by the Government.

5. No person shall, merely by reason of his having endorsed any Government security, be liable to pay any money due, whether on account of principal or interest, thereunder.

6. The signature of the officer of the Government of India authorized to sign any Government securities on behalf of the Government may be printed, engraved or lithographed, or impressed by such other mechanical process as the Governor General in Council may direct, on such securities.

Any such signature so printed, engraved, lithographed or otherwise impressed shall be as valid as if the same had been subscribed in the proper handwriting of such officer.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 15th January, 1881 and is hereby promulgated for general information :—

ACT No. IV OF 1881.

An Act to enhance the rate of Port-dues leviable at Madras.

WHEREAS it has been determined to construct an artificial harbour for the port of Madras and to defray a portion of the interest on the principal sum expended on the construction of such harbour and of the annual expenses of maintaining the same out of the dues leviable on sea-going vessels of fifteen tons and upwards entering the said port :

And whereas the maximum rate of such dues is fixed by the Indian Ports Act, 1875, section forty-five, and the third part of the first schedule thereto annexed, and the amount of such rate is insufficient to defray such portion of the said interest and expenses in addition to the other charges to meet which the said dues are applicable :

And whereas it is therefore necessary to enhance, to the extent hereinafter mentioned, the maximum rate of dues so leviable ;

It is hereby enacted as follows :—

1. This Act may be called "The Madras Port-dues Act, 1881"; and

It shall come into force as soon as the said harbour is, in the opinion of the Local Government, open

for the use of sea-going vessels of fifteen tons and upwards, and the said Government has published, in the *Fort St. George Gazette*, a notification to that effect.

2. In the Indian Ports Act, 1875, first schedule, Part III, the following amendments shall be made, that is to say :—

(a) in the first column, the numeral and word "9, Madras" shall be omitted ;

(b) in the first column, above the heading "Eastern Group," the word "Madras" shall be inserted ; and

(c) opposite the word "Madras" so inserted there shall be inserted—

(1) in the second column, the words "sea-going vessels of fifteen tons and upwards" ; and

(2) in the third column, the words "not exceeding eight annas per ton : Provided that, in the case of vessels employed in the coasting trade not being steamers, the rates shall be one-half the rates chargeable in respect of other vessels."

3. The provisions contained in the fourth column of the said Part shall, so far as they are applicable, apply to the Port of Madras.

D. FITZPATRICK,

Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 21st January, 1881, and is hereby promulgated for general information:—

ACT No. V OF 1881.

THE PROBATE AND ADMINISTRATION ACT, 1881.

PREAMBLE.

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154. Amendment of Hindú Wills Act.
155. Validation of grants of probate and administration made in British Burma.
156. Amendment of Act XV of 1877.

An Act to provide for the grant of Probates of Wills and Letters of Administration to the estates of certain deceased persons.

WHEREAS it is expedient to provide for the grant of probate of wills and letters of administration to the estates of deceased persons in cases to which the

Preamble.

Indian Succession Act, 1865, does not apply; It is hereby enacted as follows:—

CHAPTER I. PRELIMINARY.

1. This Act may be called
Short title. "The Probate and Administration Act, 1881":
Local extent. It applies to the whole of British India;
Commencement. and it shall come into force on the first day of April, 1881.

2. Chapters II to XIII, both inclusive, of this Act shall apply in the case of every Hindú, Muhammadan, Buddhist and person exempted under section 332 of the Indian Succession Act, 1865, dying before, on or after the said first day of April, 1881:

Provided that nothing herein contained shall be deemed to render invalid any transfer of property duly made before that day:

Provided also that, except in cases to which the Hindú Wills Act, 1870, applies, no Court in any local area beyond the limits of the towns of Calcutta, Madras and Bombay and the territories for the time being administered by the Chief Commissioner of British Burma, and no High Court in exercise of the concurrent jurisdiction over such local area hereby conferred, shall receive applications for probate or letters of administration until the Local Government has, with the previous sanction of the Governor General in Council, by a notification in the official Gazette, authorized it so to do.

3. In this Act, unless there be something repugnant in the subject to interpretation-clause. context,—

"Province" includes any division of British India having a Court of the last resort:

"minor" means any person subject to the Indian Majority Act, 1875, who has not attained his majority within the meaning

of that Act, and any other person who has not completed his age of eighteen years; and "minority" means the status of any such person:

"will" means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death:

"codicil" means an instrument made in relation to a will, and explaining, altering or adding to its dispositions. It is considered as forming an additional part of the will:

"specific legacy" means a legacy of specified property:

"demonstrative legacy" means a legacy directed to be paid out of specified property:

"probate" means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator:

"executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided:

"administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor: and
"District Judge" means the judge of a principal civil court of original jurisdiction.
"District Judge."

CHAPTER II.

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

4. The executor or administrator, as the case may be, of a deceased person, is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

But nothing herein contained shall vest in an executor or administrator any property of a deceased person which would otherwise have passed by survivorship to some other person.

5. When a will has been proved and deposited in a Court of competent jurisdiction, situated beyond the limits of the Province, whether in the British dominions, or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Administration with copy annexed of authenticated copy of will proved abroad.
Probate only to appointed executor.

6. Probate can be granted only to an executor appointed by the will.
7. The appointment may be express or by necessary implication.

Illustrations.

(a.) A wills that C be his executor if B will not. B is appointed executor by implication.

(b.) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law, C, and adds, "but should the within-named C be not living, I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(c.) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words:—"I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates." The nephew is appointed an executor by implication.

Persons to whom probate cannot be granted.
8. Probate cannot be granted to any person who is a minor or is of unsound mind.

Grant of probate to several executors simultaneously or at different times.
9. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Illustration.

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first then to A.

10. If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.

11. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

12. Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

13. Letters of administration cannot be granted to any person who is a minor or is of unsound mind.

14. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

15. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

16. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued calling upon the executor to accept or renounce his executorship;

except that, when one or more of several executors has or have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

17. The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the will appointing him executor.

18. If the executor renounce, or fail to accept, the executorship within the time limited for the acceptance or refusal thereof, the will may be proved and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.

19. When the deceased has made a will, but has not appointed an executor, or when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the will, or

when the executor dies after having proved the will but before he has administered all the estate of the deceased,

an universal or a residuary legatee may be admitted to prove the will, and letters of administra-

tion with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

20. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

21. When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

22. Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner herein-after mentioned, calling on the next-of-kin to accept or refuse letters of administration.

23. When the deceased has died intestate, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

When several such persons apply for administration, it shall be in the discretion of the Court to grant it to any one or more of them.

When no such person applies, it may be granted to a creditor of the deceased.

CHAPTER III.

OF LIMITED GRANTS.

(a).—*Grants limited in Duration.*

24. When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

25. When the will has been lost or destroyed and no copy has been made nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

26. When the will is in the possession of a person, residing out of the Province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original,

probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

27. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it be produced.

(b).—*Grants for the Use and Benefit of others having Right.*

28. When any executor is absent from the Province in which application is made, and there is no executor within the Province willing to act, letters of administration with the will annexed may be granted to the agent of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

29. When any person to whom, if present, letters of administration with the will annexed might be granted, is absent from the Province, letters of administration with the will annexed may be granted to his agent, limited as above-mentioned.

30. When a person entitled to administration in case of intestacy is absent from the Province, and no person equally entitled is willing to act, letters of administration may be granted to the agent of the absent person, limited as before mentioned.

31. When a minor is sole executor or sole residuary legatee, letters of administration with the will annexed may be granted to the legal guardian of such minor, or to such other person as the Court shall think fit, until the minor has attained his majority, at which period, and not before, probate of the will shall be granted to him.

32. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them has attained his majority.

33. If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestates' estates, applicable in the case of the deceased, be a minor or lunatic, letters of administration with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the Court thinks fit to appoint, for the use and benefit of the minor or lunatic, until he attains majority or becomes of sound mind, as the case may be.

34. Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate; and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.

(c).—*For Special Purposes.*

35. If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and if he should appoint an agent to take administration on his behalf, the letters of administration with the will annexed shall accordingly be limited.

36. If an executor appointed generally give an authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration with the will annexed shall be limited accordingly.

37. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf.

38. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said suit, and until a final decree shall be made therein and carried into complete execution.

39. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has or have been granted is absent from the Province within which the Court that has granted the probate or letters of administration is situate, such Court may grant, to any person whom it thinks fit, letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

40. In any case in which it appears necessary for preserving the property of a deceased person, the Court within whose district any of the property is situate may grant, to any

person whom such Court thinks fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

41. When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor is, at the time of the death of such person, resident out of the Province, and it appears to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who under ordinary circumstances would be entitled to a grant of administration, the Judge may, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, appoint such person as he thinks fit to be administrator;

and in every such case letters of administration may be limited or not as the Judge thinks fit.

(d).—*Grants with Exception.*

42. Whenever the nature of the case requires that an exception be made, probate of a will, or letters of administration with the will annexed, shall be granted subject to such exception.

43. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

(e).—*Grants of the Rest.*

44. Whenever a grant, with exception, of probate or letters of administration, with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

(f).—*Grants of Effects unadministered.*

45. If the executor to whom probate has been granted has died leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

46. In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

47. When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

CHAPTER IV.

ALTERATION AND REVOCATION OF GRANTS.

48. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

49. If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

50. The grant of probate or letters of administration may be revoked or annulled for just cause.

Explanation.—Just cause is—

1st, that the proceedings to obtain the grant were defective in substance;

2nd, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case;

3rd, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;

4th, that the grant has become useless and inoperative through circumstances.

Illustrations.

(a). The Court by which the grant was made had no jurisdiction.

(b). The grant was made without citing parties who ought to have been cited.

(c). The will of which probate was obtained was forged or revoked.

(d). A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(e). A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(f). Since probate was granted, a later will has been discovered.

(g). Since probate was granted, a codicil has been discovered, which revokes or adds to the appointment of executors under the will.

(h). The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.

CHAPTER V.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

51. The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

52. The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe:

Provided that, in the case of High Courts not established by Royal Charter, such appointment be

made with the previous sanction of the Local Government.

Persons so appointed shall be called "District Delegates."

53. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

54. The District Judge may order any person to produce and bring into Court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person ;

and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct him to attend for the purpose of being examined respecting the same,

and he shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code, in case of default in not attending or in not answering such questions or not bringing in such paper or writing as he would have been subject to in case he had been a party to a suit, and had made such default,

and the costs of the proceeding shall be in the discretion of the Judge.

55. The proceedings of the Court of the District Judge, in relation to the granting of probate and letters of administration, shall, except as hereinafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the Code of Civil Procedure.

56. Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter mentioned, of the person applying for the same that the testator or intestate, as the case may be, had at the time of his decease a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Judge.

57. When the application is made to the Judge of a District in which the deceased had no fixed abode at the time of his death, the Judge may in his discretion refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, grant them absolutely, or limited to the property within his own jurisdiction.

58. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in

any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death had his fixed place of abode within the jurisdiction of such Delegate.

59. Probate or letters of administration shall have effect over all the property, moveable or immoveable, of the deceased throughout the Province in which the same is granted, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted :

Provided that probates and letters of administration granted by a High Court established by Royal Charter, or by the Chief Court of the Panjáb, or by the Court of the Recorder of Rangoon, shall, unless otherwise directed by the grant, have like effect throughout the whole of British India.

60. Whenever a grant of probate or letters of administration is made by a Court with such effect as last aforesaid, the Registrar, or such other officer as the Court making the grant appoints in this behalf, shall send to each of the other Courts empowered to make such grants, a certificate to the following effect :—

I, A. B., Registrar [or as the case may be] of the High Court of Judicature at [or as the case may be], hereby certify that on the day of 188 the High Court of Judicature at [or as the case may be] granted probate of the will [or letters of administration of the estate] of C. D., late of deceased, to E. F. of and G. H. of , and that such probate [or letters] has [or have] effect over all the property of the deceased throughout the whole of British India ;

and such certificate shall be filed by the Court receiving the same.

61. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration, and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

62. Application for probate or for letters of administration with the will annexed shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the will, or, in the cases mentioned in sections twenty-four, twenty-five and twenty-six, a copy, draft or statement of the contents thereof annexed, and stating the time of the testator's death,

that the writing annexed is his last will and testament, or as the case may be,

that it was duly executed,
the amount of assets which are likely to come to the petitioner's hands;

and, where the application is for probate, that the petitioner is the executor named in the will.

In addition to these particulars, the petition shall further state,

when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge; and,

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

63. In cases wherein the will, copy or draft is

In what cases translation of will to be annexed to petition. written in any language other than English, or than that in ordinary use in proceedings

before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed; or, if the will, copy or draft be in any other language, then by any person competent to

Verification of translation by person other than Court translator. translate the same, in which case such translation shall be verified by that person

in the following manner:—

"I (A. B.) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."

64. Application for letters of administration

Petition for letters of administration. shall be made by petition distinctly written as aforesaid, and stating

the time and place of the deceased's death,

the family or other relatives of the deceased, and their respective residences,

the right in which the petitioner claims,

the amount of assets which are likely to come to the petitioner's hands.

In addition to these particulars the petition shall further state,

when the application is to a District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge; and

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

65. Every person applying to any of the Courts

Additional statements in petition for probate, &c. mentioned in the proviso to section fifty-nine for probate of a will or letters of adminis-

tration of an estate, intended to have effect throughout British India, shall state in his petition, in addition to the matters respectively required by sections sixty-two and sixty-four, that to the best of his belief no application has been made to any other Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid,

or, where any such application has been made, the Court to which it was made, the person or

persons by whom it was made, and the proceedings (if any) had thereon.

And the Court to which any application is made under the proviso to section fifty-nine may, if it think fit, reject the same.

66. The petition for probate or letters of ad-

Petition for probate or administration to be signed and verified. ministration shall in all cases be subscribed by the petitioner and his pleader, if

any, and shall be verified by the petitioner in the following manner or to the like effect:—

"I (A. B.), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief."

67. Where the application is for probate, or for

Verification of petition for probate by one witness to will. letters of administration with the will annexed, the petition shall also be verified by

at least one of the witnesses to the will (when procurable), in the manner or to the effect following:—

"I (C. D.), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (or mark) thereto (as the case may be) (or that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence)."

68. If any petition or declaration which is here-

Punishment for false averment in petition or declaration. by required to be verified contains any averment which the person making the veri-

fication knows or believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

District Judge may examine petitioner in person, 69. In all cases it shall be lawful for the District Judge or District Delegate, if he thinks fit,

to examine the petitioner in person upon oath, and also

to require further evidence of the due execution of the will, or the right of the petitioner to the letters

of administration, as the case may be, and

to issue citations calling upon all persons claim-

ing to have any interest in the estate of the deceased to

come and see the proceedings

before the grant of probate or letters of adminis-

tration.

The citation shall be fixed up in some con-

Publication of citation. spicuous part of the Court-

house, and also in the office

of the Collector of the District, and otherwise

published or made known in such manner as the

Judge or Delegate issuing the same may direct.

70. Caveats against the grant of probate or letters

Caveats against grant of probate or administration. of administration may be lodged with the District

Judge or a District Delegate;

and immediately on any caveat being lodged with

any District Delegate, he shall send a copy thereof

to the District Judge; and immediately on a caveat

being entered with the District Judge, a copy

thereof shall be given to the District Delegate,

if any, within whose jurisdiction it is alleged the

deceased had his fixed place of abode at the time of

his death, and to any other Judge or District Dele-

gate to whom it may appear to the District Judge expedient to transmit the same.

Form of caveat. 71. The caveat shall be to the following effect:—

"Let nothing be done in the matter of the estate of A. B., late of , deceased, who died on the day of at without notice to C. D. of ."

72. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom the application has been made, or notice thereof has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

73. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

Explanation.—By "contention" is understood the appearance of any one in person, or by his recognized agent or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

74. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

75. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge.

76. Whenever it appears to the Judge or District Delegate that probate of a will should be granted, he shall grant the same under the seal of his Court in manner following:—

"I, Judge of the District of , [or Delegate appointed for granting probate or letters of

administration in (here insert the limits of the Delegate's jurisdiction)] hereby make known that on the day of in the year , a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to the executor in the said will named, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date.

The day of 18 ."

77. Whenever it appears to the District Judge or District Delegate that letters of administration to be under seal of Court. that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he shall grant the same under the seal of his Court in manner following:—

"I, Judge of the District of , [or Delegate appointed for granting probate or letters of administration in (here insert the limits of the Delegate's jurisdiction)] hereby make known that on the day of letters of administration (with or without the will annexed, as the case may be) of the property and credits of , late of , deceased, were granted to , the father (or as the case may be) of the deceased, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same in this Court at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date.

The day of 18 ."

78. Every person to whom any grant of letters of administration is committed, and, if the Judge so direct, any person to whom probate is granted, shall give a bond to the Judge of the District Court to ensure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge from time to time by any general or special order directs.

79. The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit, assign the same to some proper person, who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

80. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted

ed until after the expiration of fourteen clear days, from the day of the testator or intestate's death.

81. Until a public registry for wills is established, every District Judge and District Delegate shall file and preserve among the records of his Court all original wills of which probate or letters of administration with the will annexed may be granted by him: and the Local Government shall make regulations for the preservation and inspection of the wills so filed as aforesaid.

82. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the Province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

83. In any case before the District Judge in which there is contention, the proceeding shall take, as nearly as may be, the form of a suit, according to the provisions of the Code of Civil Procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

84. Where any probate is, or letters of administration are, revoked, all payments *bond fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same;

and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself out of the assets of the deceased in respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

85. Notwithstanding anything hereinbefore contained, it shall, except in cases to which the Hindu Wills Act, 1870, applies, be in the discretion of the Court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under this Act.

86. Every order made by a District Judge or District Delegate by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals.

87. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

CHAPTER VI.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

88. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same powers for the recovery of debts due to him at the time of his death, as the deceased had when living.

89. All demands whatsoever, and all rights to prosecute or defend any suit or other proceeding, existing in favour of or against a person at the time of his decease survive to and against his executors or administrators, except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party, and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

Illustration.

(a). A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having instituted any suit. The cause of action does not survive.

90. An executor or administrator has power, with the consent of the Court by which the probate or letters of administration was or were granted, to dispose of the property of the deceased, either wholly or in part, in such manner as he thinks fit:

Provided that the Court may, when granting probate or letters of administration, exempt the executor or administrator from the necessity of obtaining such consent as to the whole or any specified part of the assets of the deceased.

Illustrations.

(a). The deceased has made a specific bequest of part of his property. The executor, not having assented to the bequest, sells the subject of it with the consent of the Court. The sale is valid.

(b). The executor, in the exercise of his discretion, mortgages a part of the immoveable estate of the deceased with the consent of the Court. The mortgage is valid.

91. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

92. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary in the will or grant of letters of administration, be exercised by any one of them who has proved the will or taken out administration.

Illustrations.

(a). One of several executors has power to release a debt due to the deceased.

(b). One has power to surrender a lease.

(c). One has power to sell the property of the deceased, moveable or immoveable.

(d). One has power to assent to a legacy.

(e). One has power to endorse a promissory note payable to the deceased.

(f). The will appoints A, B, C, and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

93. Upon the death of one or more of several executors or administrators, all the powers of the office become, in the absence of any direction to the contrary in the will or grant of letters of administration, vested in the survivors or survivor.

Survival of powers on death of one of several executors or administrators.

94. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

Powers of administrator of effects unadministered.

95. An administrator during minority has all the powers of an ordinary administrator.

Powers of administrator during minority.

96. When probate or letters of administration shall have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

Powers of married executrix or administratrix.

CHAPTER VII.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

97. It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

As to deceased's funeral ceremonies.

98. An executor or administrator shall, within six months from the grant of probate or letters of administration, exhibit in the Court by which the same has or have been granted an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person or persons to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the date aforesaid, exhibit an account of the estate, showing the assets that have come to his hands, and the manner in which they have been applied or disposed of.

Inventory and account.

99. In all cases where it is sought to obtain a grant of probate or letters of administration intended to have effect throughout the whole of British India, the executor, or the person applying for administration shall include in the inventory of the effects of the deceased all his moveable or immoveable property situate in British India:

Inventory to include property in any part of British India.

And the value of such property situate in each Province shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within British India.

100. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

As to property of, and debts owing to, deceased.

101. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and

Expenses to be paid before all debts.

death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

102. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

Expenses to be paid next after such expenses.

103. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domestic servant are next to be paid, and then the other debts of the deceased according to their respective priorities (if any).

Wages for certain services to be next paid, and then other debts.

104. Save as aforesaid, no creditor is to have a right of priority over another.

Save as aforesaid, all debts to be paid equally and rateably.

But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

Debts to be paid before legacies.

105. Debts of every description must be paid before any legacy.

106. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Executor or administrator not bound to pay legacies without indemnity.

107. If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions;

Abatement of general legacies.

and, in the absence of any direction to the contrary in the will, the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Executor not to pay one legatee in preference to another.

108. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

Non-abatement of specific legacy when assets sufficient to pay debts.

109. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Right under demonstrative legacy when assets sufficient to pay debts and necessary expenses.

110. If the assets are not sufficient to answer rateable abatement of the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Illustration.

A has bequeathed to B a diamond-ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B, and rupees 666 10-8 to C.

111. For the purpose of abatement, a legacy Legacies treated as for life, a sum appropriated general for purpose of by the will to produce an abatement. annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

CHAPTER VIII.

OF THE EXECUTOR'S ASSENT TO A LEGACY.

112. The assent of the executor is necessary to Assent necessary to complete a legatee's title to complete legatee's title. his legacy.

Illustrations.

(a). A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.
(b). A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

113. The assent of the executor to a specific bequest shall be sufficient Effect of executor's assent to specific legacy. to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

This assent may be verbal, and it may be either Nature of assent. express or implied from the conduct of the executor.

Illustrations.

(a). A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(b). The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(c). A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(d). Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(e). A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

114. The assent of an executor to a legacy may Conditional assent. be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Illustrations.

(a). A bequeathes to B his lands of Sultánpur, which at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(b). The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

115. When the executor is a legatee, his assent Assent of executor to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person and his assent may in like manner be express or implied.

Assent shall be implied if in his manner of Implied assent. administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

Illustration.

An executor takes the rent of a house or the interest of Government-securities bequeathed to him, and applies it to his own use. This is assent.

116. The assent of the executor to a legacy Effect of executor's assent. gives effect to it from the death of the testator.

Illustrations.

(a). A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(b). A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

117. An executor is not bound to pay or deliver Executor when to any legacy until the expiration of one year from the testator's death.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

CHAPTER IX.

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

118. Where an annuity is given by the will, Commencement of annuity when no time fixed by will. and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

119. Where there is a direction that the annuity When annuity, to be paid quarterly or monthly, first falls due. shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death, and shall, if the executor think fit, be paid when due; but the executor shall not be bound to pay it till the end of the year.

120. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made;

and if the annuitant dies in the interval Apportionment where annuitant dies between times of payment. between the times of payment, an apportioned share of the annuity shall be paid to his representative.

CHAPTER X.

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

121. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

122. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section. The intermediate interest shall form part of the residue of the testator's estate.

123. Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, a Government-annuity of the specified amount shall be purchased, or, if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct.

124. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee (if any) on his giving sufficient security for the payment of the legacy if it shall become due.

125. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

126. Such conversion and investment as are contemplated by the last preceding section shall be made at such times and in such manner as the executor in his discretion thinks fit;

and, until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of six per cent. per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

127. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the

executor or administrator shall pay or deliver the same into the Court of the District Judge, by whom, or by whose District Delegate, the probate was, or letters of administration with the will annexed were, granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards; and, if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account;

and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid;

and such money, when paid in, shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

CHAPTER XI.

OF THE PRODUCE AND INTEREST OF LEGACIES.

128. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Legatee's title to produce of specific legacy.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy.

The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(a). A bequeathes his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(b). A bequeathes his Government-securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(c). The testator bequeathes all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18 forms part of the residue.

129. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy.

Such income goes as undisposed of.

Illustrations.

(a). The testator bequeathes the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(b). The testator bequeathes the residue of his property to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

130. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Interest when no time fixed for payment of general legacy.

Exceptions.—(1). Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2). Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3). Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

131. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed.

The interest up to such time forms part of the residue of the testator's estate.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance, or unless the will contains a direction to the contrary.

132. The rate of interest shall be six per cent. per annum.

133. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

134. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

CHAPTER XII

OF THE REFUNDING OF LEGACIES.

135. An executor who has paid a legacy under the order of a Judge, is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies.

136. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

137. When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets; in such case, if further time has, under the second clause of this section, been allowed for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within

the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as is requisite to make up for the delay caused by such fraud.

138. When the executor has paid away the assets in legacies, and he is compellable to refund in afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

139. Where an executor or administrator has given such notices as the High Court may, by any general rule to be made from time to time, prescribe, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he has not had notice at the time of such distribution;

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

140. A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies, and whether the payment of the legacy by the executor was voluntary or not.

141. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund under the last preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

142. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent; but, if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

143. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

144. The refunding shall in all cases be without interest.

145. The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

CHAPTER XIII.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

146. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Illustrations.

(a). The executor pays out of the estate an unfounded claim. He is liable to make good the loss caused by the payment.

(b). The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss caused by the neglect.

(c). The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

147. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

Illustrations.

(a). The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount so lost.

(b). The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount of the debt.

CHAPTER XIV.

MISCELLANEOUS.

148. In Chapters VIII, IX, X and XII of this Act the provisions as to an executor shall apply also to an administrator with the will annexed.

Saving-clause.

149. Nothing herein contained shall—

(a) validate any testamentary disposition which would otherwise have been invalid ;

(b) invalidate any such disposition which would otherwise have been valid ;

(c) deprive any person of any right of maintenance to which he would otherwise have been entitled ; or

(d) affect the rights, duties and privileges of the Administrator General of Bengal, Madras or Bombay.

150. No proceedings to obtain probate of a will, or letters of administration to the estate, of any Hindú, Muhammadan, Buddhist or person exempted under section 332 of the Indian Succession Act, 1865, shall be instituted in any Court in British India except under this Act.

151. In Act No. XXVII of 1860 (*An Act for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*),

sections 15 and 16 and the proviso to section 13 shall be repealed.

152. The grant of probate or letters of administration under this Act in respect of any property shall be deemed to supersede any certificate previously granted in respect of the same property under the said Act No. XXVII of 1860, or Bombay Regulation No. VIII of 1827 ; and when, at the time of the grant of such probate or letters, any suit or other proceeding instituted by the holder of such certificate regarding such property is pending, the person to whom such grant is made shall, on applying to the Court in which such suit or proceeding is pending, be entitled to take the place of such holder in such suit or proceeding :

Provided that, when any certificate is superseded under this section, all payments made to the holder of such certificate in ignorance of such supersession shall be held good against claims under the probate or letters of administration.

153. In the Court-fees Act, 1870, schedule I, Nos. 11 and 12, in the third column, after the words "amount or value," the following shall be inserted, namely :—

"Provided that, when after a certificate has been granted as aforesaid in respect of any estate, probate or letters of administration is or are granted in respect of the same estate, the fee payable in respect of such latter grant shall be reduced by the amount of the fee paid in respect of the former grant."

154. The following amendments shall be made in the Hindú Wills Act, 1870 (namely) :—

(a). For the portion of section two commencing with the words "sections one hundred and seventy-nine" and ending with the words "administrator with the will annexed," the words "and section one hundred and eighty-seven" shall be substituted.

(b). The third clause of section three and the last clause of section six shall be repealed.

(c). In section six, for the words "one hundred and three and one hundred and eighty-two" the words "and one hundred and three" shall be substituted.

155. All grants of probate of the will or letters of administration to the estate of any deceased Hindú, Muhammadan or Buddhist, or any person exempted under section 332 of the Indian Succession Act, 1865, which, before this Act comes into force have been made in British Burma, shall, whenever such grant would have been lawful if this Act had been in force, be deemed to have been made in accordance with law.

156. In the second schedule to the Indian Limitation Act, 1877, No. 43, after the figures "321," the following shall be inserted, namely—"or under the Probate and Administration Act, 1881, section 139 or 140."

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 21st January, 1881, and is hereby promulgated for general information :—

ACT No. VI OF 1881.

An Act to make further provision for the grant of Probate and Letters of Administration in non-contentious cases.

WHEREAS it is expedient to make further provision for the grant of probate and letters of administration in non-contentious cases; It is hereby enacted as follows :—

1. This Act may be called "The District Delegates Act, 1881":

It extends to the whole of British India;

and it shall come into force on the first day of April, 1881.

2. After section 235 of the Indian Succession Act, 1865, the following section shall be added :—

"235A. The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit, to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe:

"Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

"Persons so appointed shall be called 'District Delegates'."

3. After section 241 of the said Act, the following section shall be added :—

"241A. Probate and letters of administration may be granted by Delegate. Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death resided within the jurisdiction of such Delegate."

4. To sections 244 and 246 of the said Act, respectively, the following words shall be added :—

"and when the application

is to a District Delegate, the petition shall further state that the deceased at the time of his death resided within the jurisdiction of such Delegate."

Substitution of section for section 251 of same Act.

5. For section 251 of the said Act, the following section shall be substituted :—

"251. Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate; and immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased resided at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same."

6. In section 253 of the said Act, after the word "Judge" the words "or officer," and after the word "made" the words "or notice thereof has been given of its entry with some other Delegate," shall be inserted.

Addition of sections after section 253 of same Act.

7. After section 253 of the said Act, the following sections shall be added :—

"253A. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

"Explanation.—By 'contention' is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf to oppose the proceeding.

"253B. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in

relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

"253C. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge."

8. In the said Act, sections 254 and 255, respectively, after the words "I, Judge of the District of", the

Amendment of sections 254, 255 and 308 of same Act.

words "(or Delegate appointed for granting probate or letters of administration in *(here insert the limits of the Delegate's jurisdiction)*)"; and in section 308, after the words "District Judge by whom" the words "or by whose District Delegate" shall be inserted.

9. In the said Act, sections 246, 250, 255 and 259, after the words "District Judge," and in section 250 and section 254 (when it first occurs) after the word "Judge," the words "or District Delegate" shall be inserted respectively.

Introduction of the words "or District Delegate" in certain sections of same Act.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 21st January, 1881, and is hereby promulgated for general information:—

ACT No. VII OF 1881.

An Act to amend Bengal Act No. IX of 1880 (the Cess Act, 1880).

WHEREAS it is expedient to amend Bengal Act No. IX of 1880 (the Cess Act, 1880); It is hereby enacted as follows:—

1. In the said Act, after section sixty-four, the following sections shall be inserted, and shall be deemed to have been so inserted on and from the date on which such Act came into force:—

“64A. All sums due to the holder of any estate or tenure under the provisions of this chapter, in respect of any land held rent-free, may be recovered by such holder from any owner or holder of such rent-free land, or from any occupier of the same, by any

means and any process by which the amount might be recovered if it were due on account of rent of a transferable tenure or holding, and subject to the same rules as to limitation:

“Provided that, if any such objection as is mentioned in section 53, has been made before the Collector, no proceedings shall be commenced, and no proceedings which have been commenced shall be continued, for recovery of cess in respect of the lands which are the subject of such objection, until such objection shall have been disposed of by the Collector.

“64B. In every suit for the recovery of any such sum, the person to whom the sum is due may proceed at his option either against the owner or holder of the rent-free land in respect of which such amount is due, or against the occupier thereof; and any decree obtained in such suit against any occupier of such land shall have the same effect and be followed by the same consequences in respect of the execution of such decree against the owner or holder of such land, and in respect of the sale of such land in such execution, as if the suit had been brought and the decree given against such owner or holder of such land, but shall have effect against such occupier personally so long only as he remains in occupation of such land, and no longer.”

D. FITZPATRICK,
Secy. to the Govt. of India.



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Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 15th January, 1881, and is hereby promulgated for general information :—

ACT No. III of 1881.

An Act to provide for certain matters relating to Securities of the Government of India.

WHEREAS the Governor General in Council has determined to issue, in respect of the four and a half per cent. loan of 1880, certificates declaring the bearers thereof entitled to the principal sums specified therein, and coupons for the interest payable on such principal sums ;

and whereas the Governor General in Council may from time to time desire to issue like certificates, with or without like coupons, in respect of other loans ;

and whereas it is expedient to declare the mode in which the title to such certificates and coupons shall be transferable ;

and whereas it is also expedient to provide for certain other matters relating to all securities of the Government of India ; It is hereby enacted as follows :—

Short title.

1. This Act may be called "The Indian Securities Act, 1881" and shall come into force at once.

Commencement.

2. In this Act, "Government securities" includes promissory notes, debentures, loan-certificates, coupons and all other securities issued by the Government of India, whether before or after the passing of this Act.

3. Whenever the Governor General in Council has issued, in respect of any loan, a certificate declaring the bearer thereof to be entitled to the portion of the loan therein expressed, or a coupon for any amount payable as interest on any portion of such loan, the title to such certificate or coupon may be transferred as if the certificate or coupon were a promissory note payable to bearer ; and, on payment, by or on behalf of the Government, to the bearer of such certificate or coupon, of the amount expressed therein, at or after the date on which it becomes due, the Government shall be discharged as if such certificate or coupon were a promissory note payable to bearer.

4. No notice of any trust in respect of any Government security shall be receivable by the Government.

5. No person shall, merely by reason of his having endorsed any Government security, be liable to pay any money due, whether on account of principal or interest, thereunder.

6. The signature of the officer of the Government of India authorized to sign any Government securities on behalf of the Government may be printed, engraved or lithographed, or impressed by such other mechanical process as the Governor General in Council may direct, on such securities.

Any such signature so printed, engraved, lithographed or otherwise impressed shall be as valid as if the same had been subscribed in the proper handwriting of such officer.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 15th January, 1881, and is hereby promulgated for general information :—

ACT No. IV OF 1881.

An Act to enhance the rate of Port-dues leviable at Madras.

WHEREAS it has been determined to construct an artificial harbour for the port of Madras and to defray a portion of the interest on the principal sum expended on the construction of such harbour and of the annual expenses of maintaining the same out of the dues leviable on sea-going vessels of fifteen tons and upwards entering the said port :

And whereas the maximum rate of such dues is fixed by the Indian Ports Act, 1875, section forty-five, and the third part of the first schedule thereto annexed, and the amount of such rate is insufficient to defray such portion of the said interest and expenses in addition to the other charges to meet which the said dues are applicable :

And whereas it is therefore necessary to enhance, to the extent hereinafter mentioned, the maximum rate of dues so leviable ;

It is hereby enacted as follows :—

1. This Act may be called “The Madras Port-dues Act, 1881”; and

It shall come into force as soon as the said harbour is, in the opinion of the Local Government, open

for the use of sea-going vessels of fifteen tons and upwards, and the said Government has published, in the *Fort St. George Gazette*, a notification to that effect.

2. In the Indian Ports Act, 1875, first schedule, Part III, the following amendments shall be made, that is to say :—

(a) in the first column, the numeral and word “9, Madras” shall be omitted ;

(b) in the first column, above the heading “*Eastern Group*,” the word “Madras” shall be inserted ; and

(c) opposite the word “Madras” so inserted there shall be inserted—

(1) in the second column, the words “sea-going vessels of fifteen tons and upwards” ; and

(2) in the third column, the words “not exceeding eight annas per ton : Provided that, in the case of vessels employed in the coasting trade not being steamers, the rates shall be one-half the rates chargeable in respect of other vessels.”

3. The provisions contained in the fourth column of the said Part shall, so far as they are applicable, apply to the Port of Madras.

D. FITZPATRICK,

Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 21st January, 1881, and is hereby promulgated for general information:—

ACT No. V OF 1881.

THE PROBATE AND ADMINISTRATION ACT, 1881.

PREAMBLE.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title.
- Local extent.
- Commencement.
2. Personal application.
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OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

4. Character and property of executor or administrator as such.
5. Administration with copy annexed of authenticated copy of will proved abroad.
6. Probate only to appointed executor.
7. Appointment express or implied.
8. Persons to whom probate cannot be granted.
9. Grant of probate to several executors simultaneously or at different times.
10. Separate probate of codicil discovered after grant of probate.
Procedure when different executors appointed by codicil.
11. Accrual of representation to surviving executor.
12. Effect of probate.
13. To whom administration may not be granted.
14. Effect of letters of administration.
15. Acts not validated by administration.
16. Grant of administration where executor has not renounced.
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17. Form and effect of renunciation of executorship.
18. Procedure where executor renounces or fails to accept within time limited.
19. Grant of administration to universal or residuary legatee.

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20. Right to administration of representative of deceased residuary legatee.
21. Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.
22. Citation before grant of administration to legatee other than universal or residuary.
23. To whom administration may be granted.

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OF LIMITED GRANTS.

(a).—*Grants limited in Duration.*

24. Probate of copy or draft of lost will.
25. Probate of contents of lost or destroyed will.
26. Probate of copy where original exists.
27. Administration until will produced.

(b).—*Grants for the Use and Benefit of others having Right.*

28. Administration, with will annexed, to attorney of absent executor.
29. Administration, with will annexed, to attorney of absent person, who, if present, would be entitled to administer.
30. Administration to attorney of absent person entitled to administer in case of intestacy.
31. Administration during minority of sole executor or residuary legatee.
32. Administration during minority of several executors or residuary legatees.
33. Administration for use and benefit of lunatic.
34. Administration *pendente lite*.

(c).—*For Special Purposes.*

35. Probate limited to purpose specified in will.
36. Administration with will annexed limited to particular purpose.
37. Administration limited to trust-property.
38. Administration limited to suit.
39. Administration limited to purpose of becoming party to suit to be brought against administrator.
40. Administration limited to collection and preservation of deceased's property.
41. Appointment, as administrator, of person other than one who under ordinary circumstances would be entitled to administration.

(d).—*Grants with Exception.*

42. Probate or administration with will annexed subject to exception.
43. Administration with exception.

(e).—*Grants of the Rest.*

44. Probate or administration of rest.

(f).—Grants of Effects unadministered.

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45. Grant of effects unadministered.
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48. What errors may be rectified by Court.
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50. Revocation or annulment for just cause.
"Just cause."

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OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

51. Jurisdiction of District Judge in granting and revoking probates, &c.
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53. District Judge's powers as to grant of probate and administration.
54. District Judge may order person to produce testamentary papers.
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56. When probate or administration may be granted by District Judge.
57. Disposal of application made to Judge of district in which deceased had no fixed abode.
58. Probate and letters of administration may be granted by Delegate.
59. Conclusiveness of probate or letters of administration.
Effect of unlimited probates, &c., granted by certain Courts.
60. Transmission of certificate by Court granting unlimited probate, &c., to other Courts.
61. Conclusiveness of application for probate or administration, if properly made and verified.
62. Petition for probate.
63. In what cases translation of will to be annexed to petition.
Verification of translation by person other than Court translator.
64. Petition for letters of administration.
65. Additional statements in petition for probate, &c.
66. Petition for probate or administration to be signed and verified.
67. Verification of petition for probate by one witness to will.
68. Punishment for false averment in petition or declaration.
69. District Judge may examine petitioner in person, require further evidence, and issue citations to inspect proceedings.
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70. Caveats against grant of probate or administration.
71. Form of caveat.

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72. After entry of caveat, no proceeding taken on petition until after notice to caveator.
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Form of such grant.
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79. Assignment of administration-bond.
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85. Power to refuse letters of administration.
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90. Power of executor or administrator to dispose of property.
91. Purchase by executor or administrator of deceased's property.
92. Powers of several executors or administrators exercisable by one.
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94. Powers of administrator of effects unadministered.
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107. Abatement of general legacies.
108. Non-abatement of specific legacy when assets sufficient to pay debts.
109. Right under demonstrative legacy, when assets sufficient to pay debts and necessary expenses.
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131. Interest when time fixed.
132. Rate of interest.
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142. When unsatisfied legatee must first proceed against executor, if solvent.
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OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

146. Liability of executor or administrator for devastation.
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MISCELLANEOUS.

148. Provisions applied to administrator with will annexed.
149. Saving-clause.
150. Probate and administration in case of persons exempted from Succession Act, to be granted only under this Act.
151. Repeal of portions of Act XXVII of 1860.
152. Grant of probate or administration to supersede certificate under Act XXVII of 1860, or Bombay Regulation VIII of 1827.
153. Amendment of Court-fees Act.
154. Amendment of Hindú Wills Act.
155. Validation of grants of probate and administration made in British Burma.
156. Amendment of Act XV of 1877.

An Act to provide for the grant of Probates of Wills and Letters of Administration to the estates of certain deceased persons.

WHEREAS it is expedient to provide for the grant of probate of wills and letters of administration to the estates of deceased persons in cases to which the

Preamble.

Indian Succession Act, 1865, does not apply; It is hereby enacted as follows:—

CHAPTER I. PRELIMINARY.

1. This Act may be called
Short title. "The Probate and Administration Act, 1881":
Local extent. It applies to the whole of British India;
Commencement. and it shall come into force on the first day of April, 1881.

2. Chapters II to XIII, both inclusive, of this Act shall apply in the case of every Hindú, Muhammadan, Buddhist and person exempted under section 332 of the Indian Succession Act, 1865, dying before, on or after the said first day of April, 1881:

Provided that nothing herein contained shall be deemed to render invalid any transfer of property duly made before that day:

Provided also that, except in cases to which the Hindú Wills Act, 1870, applies, no Court in any local area beyond the limits of the towns of Calcutta, Madras and Bombay and the territories for the time being administered by the Chief Commissioner of British Burma, and no High Court in exercise of the concurrent jurisdiction over such local area hereby conferred, shall receive applications for probate or letters of administration until the Local Government has, with the previous sanction of the Governor General in Council, by a notification in the official Gazette, authorized it so to do.

3. In this Act, unless there be something repugnant in the subject to context,—

"Province" includes any division of British India having a Court of the last resort:

"minor" means any person subject to the Indian Majority Act, 1875, who has not attained his majority within the meaning

of that Act, and any other person who has not completed his age of eighteen years; and "minority" means the status of any such person:

"will" means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death:

"codicil" means an instrument made in relation to a will, and explaining, altering or adding to its dispositions. It is considered as forming an additional part of the will:

"specific legacy" means a legacy of specified property:

"demonstrative legacy" means a legacy directed to be paid out of specified property:

"probate" means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator:

"executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided:

"administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor: and

"District Judge" means the judge of a principal civil court of original jurisdiction.

CHAPTER II.

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

4. The executor or administrator, as the case may be, of a deceased person, is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

But nothing herein contained shall vest in an executor or administrator any property of a deceased person which would otherwise have passed by survivorship to some other person.

5. When a will has been proved and deposited in a Court of competent jurisdiction, situated beyond the limits of the Province, whether in the British dominions, or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

6. Probate can be granted only to an executor appointed by the will.

7. The appointment may be express or by necessary implication.

Illustrations.

(a.) A wills that C be his executor if B will not. B is appointed executor by implication.

(b.) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law, C, and adds, "but should the within-named C be not living, I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(c.) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words:—"I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates." The nephew is appointed an executor by implication.

8. Probate cannot be granted to any person who is a minor or is of unsound mind.

9. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Illustration.

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first then to A.

10. If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.

Procedure when different executors appointed by codicil.

11. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

Accrual of representation to surviving executor.

12. Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

Effect of probate.

13. Letters of administration cannot be granted to any person who is a minor or is of unsound mind.

To whom administration may not be granted.

14. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

Effect of letters of administration.

15. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

Acts not validated by administration.

16. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued calling upon the executor to accept or renounce his executorship;

Grant of administration where executor has not renounced.

except that, when one or more of several executors has or have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

Exception.

17. The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the will appointing him executor.

Form and effect of renunciation of executorship.

18. If the executor renounce, or fail to accept, the executorship within the time limited for the acceptance or refusal thereof, the will may be proved and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.

Procedure where executor renounces or fails to accept within time limited.

19. When the deceased has made a will, but has not appointed an executor, or when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the will, or

Grant of administration to universal or residuary legatee.

when the executor dies after having proved the will but before he has administered all the estate of the deceased, an universal or a residuary legatee may be admitted to prove the will, and letters of administra-

tion with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

20. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

Right to administration of representative of deceased residuary legatee.

21. When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.

22. Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner herein-after mentioned, calling on the next-of-kin to accept or refuse letters of administration.

Citation before grant of administration to legatee other than universal or residuary.

23. When the deceased has died intestate, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

When several such persons apply for administration, it shall be in the discretion of the Court to grant it to any one or more of them.

When no such person applies, it may be granted to a creditor of the deceased.

CHAPTER III.

OF LIMITED GRANTS.

(a).—*Grants limited in Duration.*

24. When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

25. When the will has been lost or destroyed and no copy has been made or the draft preserved, probate may be granted of its contents, if they can be established by evidence.

26. When the will is in the possession of a person, residing out of the Province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original,

Probate of copy where original exists.

probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

27. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it be produced.

(b).—*Grants for the Use and Benefit of others having Right.*

28. When any executor is absent from the Province in which application is made, and there is no executor within the Province willing to act, letters of administration with the will annexed may be granted to the agent of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

29. When any person to whom, if present, letters of administration with the will annexed might be granted, is absent from the Province, letters of administration with the will annexed may be granted to his agent, limited as above-mentioned.

30. When a person entitled to administration in case of intestacy is absent from the Province, and no person equally entitled is willing to act, letters of administration may be granted to the agent of the absent person, limited as before mentioned.

31. When a minor is sole executor or sole residuary legatee, letters of administration with the will annexed may be granted to the legal guardian of such minor, or to such other person as the Court shall think fit, until the minor has attained his majority, at which period, and not before, probate of the will shall be granted to him.

32. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them has attained his majority.

33. If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate's estates, applicable in the case of the deceased, be a minor or lunatic, letters of administration with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the Court thinks fit to appoint, for the use and benefit of the minor or lunatic, until he attains majority or becomes of sound mind, as the case may be.

34. Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate; and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.

(c).—*For Special Purposes.*

35. If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and if he should appoint an agent to take administration on his behalf, the letters of administration with the will annexed shall accordingly be limited.

36. If an executor appointed generally give an authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration with the will annexed shall be limited accordingly.

37. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf.

38. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said suit, and until a final decree shall be made therein and carried into complete execution.

39. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has or have been granted is absent from the Province within which the Court that has granted the probate or letters of administration is situate, such Court may grant, to any person whom it thinks fit, letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

40. In any case in which it appears necessary for preserving the property of a deceased person, the Court within whose district any of the property is situate may grant, to any

made with the previous sanction of the Local Government.

Persons so appointed shall be called "District Delegates."

53. The District Judge shall have the like District Judge's powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

54. The District Judge may order any person District Judge may to produce and bring into Court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person ;

and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct him to attend for the purpose of being examined respecting the same,

and he shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code, in case of default in not attending or in not answering such questions or not bringing in such paper or writing as he would have been subject to in case he had been a party to a suit, and had made such default,

and the costs of the proceeding shall be in the discretion of the Judge.

55. The proceedings of the Court of the District Judge, in relation to the granting of probate and letters of administration, shall, except as hereinafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the Code of Civil Procedure.

56. Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter mentioned, of the person applying for the same that the testator or intestate, as the case may be, had at the time of his decease a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Judge.

57. When the application is made to the Judge of a District in which the deceased had no fixed abode at the time of his death, the Judge may in his discretion refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, grant them absolutely, or limited to the property within his own jurisdiction.

58. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in

any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death had his fixed place of abode within the jurisdiction of such Delegate.

59. Probate or letters of administration shall have effect over all the property, moveable or immoveable, of the deceased throughout the Province in which the same is granted, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted :

Provided that probates and letters of administration granted by a High Court established by Royal Charter, or by the Chief Court of the Panjáb, or by the Court of the Recorder of Rangoon, shall, unless otherwise directed by the grant, have like effect throughout the whole of British India.

60. Whenever a grant of probate or letters of administration is made by a Court with such effect as last aforesaid, the Registrar, or such other officer as the Court making the grant appoints in this behalf, shall send to each of the other Courts empowered to make such grants, a certificate to the following effect :—

I, *A. B.*, Registrar [*or as the case may be*] of the High Court of Judicature at _____ day of _____ 188____ the High Court of Judicature at _____ [*or as the case may be*] granted probate of the will [*or letters of administration of the estate*] of *C. D.*, late of _____ deceased, to *E. F.* of _____ and *G. H.* of _____, and that such probate [*or letters*] has [*or have*] effect over all the property of the deceased throughout the whole of British India ;

and such certificate shall be filed by the Court receiving the same.

61. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration, and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

62. Application for probate or for letters of administration with the will annexed shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the will, or, in the cases mentioned in sections twenty-four, twenty-five and twenty-six, a copy, draft or statement of the contents thereof annexed, and stating

the time of the testator's death,

gate to whom it may appear to the District Judge expedient to transmit the same.

Form of caveat.

71. The caveat shall be to the following effect:—

"Let nothing be done in the matter of the estate of A. B., late of , deceased, who died on the day of at without notice to C. D. of ."

72. No proceeding shall be taken on a petition

After entry of caveat, no proceeding taken on petition until after notice to caveator.

for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom the application has been made, or notice thereof has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

73. A District Delegate shall not grant pro-

District Delegate when not to grant probate or administration.

bate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

Explanation.—By "contention" is understood the appearance of any one in person, or by his recognized agent or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

74. In every case in which there is no conten-

Power to transmit statement to District Judge in doubtful cases where no contention.

tion, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

75. In every case in which there is contention,

Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.

or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge.

76. Whenever it appears to the Judge or Dis-

Grant of probate to be under seal of Court.

trict Delegate that probate of a will should be granted, he shall grant the same under the seal of his Court in manner following:—

"I, Judge of the District of , [or Delegate appointed for granting probate or letters of

administration in (*here insert the limits of the Delegate's jurisdiction*)] hereby make known that on the day of in the year the last will of , late of , a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to , the executor in the said will named, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date.

The day of 18 ."

77. Whenever it appears to the District

Grant of letters of administration to be under seal of Court.

Judge or District Delegate that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he shall grant the same under the seal of his Court in manner following:—

"I, Judge of the District of ,

Form of such grant.

[or Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)] hereby make known that on the day of letters of administration (with or without the will annexed, as the case may be) of the property and credits of , late of , deceased, were granted to , the father (or as the case may be) of the deceased, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same in this Court at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date.

The day of 18 ."

78. Every person to whom any grant of letters

Administration-bond.

of administration is committed, and, if the Judge so direct, any person to whom probate is granted, shall give a bond to the Judge of the District Court to enure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge from time to time by any general or special order directs.

79. The Court may, on application made by

Assignment of administration-bond.

petition and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit, assign the same to some proper person, who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

80. No probate of a will shall be granted until

Time before which probate or administration shall not be granted.

after the expiration of seven clear days, and no letters of administration shall be grant-

ed until after the expiration of fourteen clear days, from the day of the testator or intestate's death.

81. Until a public registry for wills is established, every District Judge and District Delegate shall file and preserve among the records of his Court all original wills of which probate or letters of administration with the will annexed may be granted by him: and the Local Government shall make regulations for the preservation and inspection of the wills so filed as aforesaid.

82. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the Province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

83. In any case before the District Judge in which there is contention, the proceeding shall take, as nearly as may be, the form of a suit, according to the provisions of the Code of Civil Procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

84. Where any probate is, or letters of administration are, revoked, all payments *bond fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same;

and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself out of the assets of the deceased in respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

85. Notwithstanding anything hereinbefore contained, it shall, except in cases to which the Hindú Wills Act, 1870, applies, be in the discretion of the Court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under this Act.

86. Every order made by a District Judge or District Delegate by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals.

87. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

CHAPTER VI.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

88. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same powers for the recovery of debts due to him at the time of his death, as the deceased had when living.

89. All demands whatsoever, and all rights to prosecute or defend any suit or other proceeding, existing in favour of or against a person at the time of his decease survive to and against his executors or administrators, except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party, and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

Illustration.

(a). A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having instituted any suit. The cause of action does not survive.

90. An executor or administrator has power, with the consent of the Court by which the probate or letters of administration was or were granted, to dispose of the property of the deceased, either wholly or in part, in such manner as he thinks fit:

Provided that the Court may, when granting probate or letters of administration, exempt the executor or administrator from the necessity of obtaining such consent as to the whole or any specified part of the assets of the deceased.

Illustrations.

(a). The deceased has made a specific bequest of part of his property. The executor, not having assented to the bequest, sells the subject of it with the consent of the Court. The sale is valid.

(b). The executor, in the exercise of his discretion, mortgages a part of the immoveable estate of the deceased with the consent of the Court. The mortgage is valid.

91. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

92. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary in the will or grant of letters of administration, be exercised by any one of them who has proved the will or taken out administration.

Illustrations.

(a). One of several executors has power to release a debt due to the deceased.

(b). One has power to surrender a lease.

(c). One has power to sell the property of the deceased, moveable or immoveable.

(d). One has power to assent to a legacy.

(e). One has power to endorse a promissory note payable to the deceased.

(f). The will appoints A, B, C, and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

93. Upon the death of one or more of several executors or administrators, all the powers of the office become, in the absence of any direction to the contrary in the will or grant of letters of administration, vested in the survivors or survivor.

94. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

95. An administrator during minority has all the powers of an ordinary administrator.

96. When probate or letters of administration shall have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

CHAPTER VII.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

97. It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

98. An executor or administrator shall, within six months from the grant of probate or letters of administration, exhibit in the Court by which the same has or have been granted an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person or persons to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the date aforesaid, exhibit an account of the estate, showing the assets that have come to his hands, and the manner in which they have been applied or disposed of.

99. In all cases where it is sought to obtain a grant of probate or letters of administration intended to have effect throughout the whole of British India, the executor, or the person applying for administration shall include in the inventory of the effects of the deceased all his moveable or immoveable property situate in British India:

And the value of such property situate in each Province shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within British India.

100. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

101. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and

death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

102. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

103. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domestic servant are next to be paid, and then the other debts of the deceased according to their respective priorities (if any).

104. Save as aforesaid, no creditor is to have a right of priority over any other debts to be paid equally and rateably.

But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

Debts to be paid before legacies.

105. Debts of every description must be paid before any legacy.

106. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

107. If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions;

and, in the absence of any direction to the contrary in the will, the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

108. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

109. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

CHAPTER X.

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

121. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

122. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

The intermediate interest shall form part of the residue of the testator's estate.

123. Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, a Government-annuity of the specified amount shall be purchased, or,

if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct.

124. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee (if any) on his giving sufficient security for the payment of the legacy if it shall become due.

125. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

126. Such conversion and investment as are contemplated by the last preceding section shall be made at such times and in such manner as the executor in his discretion thinks fit:

and, until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of six per cent. per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

127. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the

executor or administrator shall pay or deliver the same into the Court of the District Judge by whom, or by whose District Delegate, the probate was, or letters of administration with the will annexed were, granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards; and, if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account;

and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid;

and such money, when paid in, shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

CHAPTER XI.

OF THE PRODUCE AND INTEREST OF LEGACIES.

128. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy.

The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(a). A bequeathes his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(b). A bequeathes his Government-securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(c). The testator bequeathes all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18 forms part of the residue.

129. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy.

Such income goes as undisposed of.

Illustrations.

(a). The testator bequeathes the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(b). The testator bequeathes the residue of his property to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

130. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Exceptions.—(1). Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2). Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3). Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

131. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed.

Interest when time fixed.

The interest up to such time forms part of the residue of the testator's estate.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance, or unless the will contains a direction to the contrary.

Rate of interest.

132. The rate of interest shall be six per cent. per annum.

133. No interest is payable on the arrears of an annuity within the first year after testator's death.

No interest on arrears of annuity within first year after testator's death.

year may have been fixed by the will for making the first payment of the annuity.

134. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

Interest on sum to be invested to produce annuity.

CHAPTER XII

OF THE REFUNDING OF LEGACIES.

135. An executor who has paid a legacy under the order of a Judge, is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies.

Refund of legacy paid under Judge's orders.

136. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

No refund if paid voluntarily.

137. When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets; in such case, if further time has, under the second clause of this section, been allowed for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within

the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as is requisite to make up for the delay caused by such fraud.

138. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

When each legatee assets in legacies, and he is compellable to refund in proportion.

139. Where an executor or administrator has given such notices as the High Court may, by any general rule to be made from time to time, prescribe, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he has not had notice at the time of such distribution;

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

Creditor may follow assets.

140. A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies, and whether the payment of the legacy by the executor was voluntary or not.

Creditor may call upon legatee to refund.

141. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund under the last preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

When legatee, not satisfied or compelled to refund under section 140, cannot oblige one paid in full to refund.

142. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent; but, if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

When unsatisfied legatee must first proceed against executor, if solvent.

143. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Limit to refunding of one legatee to another.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

Refunding to be without interest.

144. The refunding shall in all cases be without interest.

145. The surplus or residue of the deceased's Residue after usual property, after payment of payments to be paid to debts and legacies, shall be residuary legatee. paid to the residuary legatee when any has been appointed by the will.

CHAPTER XIII.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

146. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Illustrations.

(a). The executor pays out of the estate an unfounded claim. He is liable to make good the loss caused by the payment.

(b). The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss caused by the neglect.

(c). The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

147. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

Illustrations.

(a). The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount so lost.

(b). The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount of the debt.

CHAPTER XIV.

MISCELLANEOUS.

148. In Chapters VIII, IX, X and XII of this Act the provisions as to an executor shall apply also to an administrator with the will annexed.

Saving-clause.

149. Nothing herein contained shall—

(a) validate any testamentary disposition which would otherwise have been invalid ;

(b) invalidate any such disposition which would otherwise have been valid ;

(c) deprive any person of any right of maintenance to which he would otherwise have been entitled ; or

(d) affect the rights, duties and privileges of the Administrator General of Bengal, Madras or Bombay.

150. No proceedings to obtain probate of a will, or letters of administration to the estate, of any Hindú, Muhammadan, Buddhist or person exempted under section 332 of the Indian Succession Act, 1865, shall be instituted in any Court in British India except under this Act.

151. In Act No. XXVII of 1860 (*An Act for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*),

sections 15 and 16 and the proviso to section 13 shall be repealed.

152. The grant of probate or letters of administration under this Act in respect of any property shall be deemed to supersede any certificate previously granted in respect of the same property under the said Act No. XXVII of 1860, or Bombay Regulation No. VIII of 1827 ; and when, at the time of the grant of such probate or letters, any suit or other proceeding instituted by the holder of such certificate regarding such property is pending, the person to whom such grant is made shall, on applying to the Court in which such suit or proceeding is pending, be entitled to take the place of such holder in such suit or proceeding :

Provided that, when any certificate is superseded under this section, all payments made to the holder of such certificate in ignorance of such supersession shall be held good against claims under the probate or letters of administration.

153. In the Court-fees Act, 1870, schedule I, Nos. 11 and 12, in the third column, after the words "amount or value," the following shall be inserted, namely :—

"Provided that, when after a certificate has been granted as aforesaid in respect of any estate, probate or letters of administration is or are granted in respect of the same estate, the fee payable in respect of such latter grant shall be reduced by the amount of the fee paid in respect of the former grant."

154. The following amendments shall be made in the Hindú Wills Act, 1870 (namely) :—

(a). For the portion of section two commencing with the words "sections one hundred and seventy-nine" and ending with the words "administrator with the will annexed," the words "and section one hundred and eighty-seven" shall be substituted.

(b). The third clause of section three and the last clause of section six shall be repealed.

(c). In section six, for the words "one hundred and three and one hundred and eighty-two" the words "and one hundred and three" shall be substituted.

155. All grants of probate of the will or letters of administration to the estate of any deceased Hindú, Muhammadan or Buddhist, or any person exempted under section 332 of the Indian Succession Act, 1865, which, before this Act comes into force have been made in British Burma, shall, whenever such grant would have been lawful if this Act had been in force, be deemed to have been made in accordance with law.

156. In the second schedule to the Indian Limitation Act, 1877, No. 43, after the figures "321," the following shall be inserted, namely—"or under the Probate and Administration Act, 1881, section 139 or 140."

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 21st January, 1881, and is hereby promulgated for general information:—

ACT No. VI OF 1881.

An Act to make further provision for the grant of Probate and Letters of Administration in non-contentious cases.

WHEREAS it is expedient to make further provision for the grant of probate and letters of administration in non-contentious cases; It is hereby enacted as follows:—

1. This Act may be called "The District Delegates Act, 1881":

It extends to the whole of British India;

and it shall come into force on the first day of April, 1881.

2. After section 235 of the Indian Succession Act, 1865, the following section shall be added:—

"235A. The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit, to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe:

"Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

"Persons so appointed shall be called 'District Delegates'."

3. After section 241 of the said Act, the following section shall be added:—

"241A. Probate and letters of administration may be granted by Delegate. Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death resided within the jurisdiction of such Delegate."

4. To sections 244 and 246 of the said Act, respectively, the following words shall be added:—
"and when the application

is to a District Delegate, the petition shall further state that the deceased at the time of his death resided within the jurisdiction of such Delegate."

Substitution of section for section 251 of same Act.

5. For section 251 of the said Act, the following section shall be substituted:—

"251. Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate; and immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased resided at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same."

6. In section 253 of the said Act, after the word "Judge" the words "or officer," and after the word "made" the words "or notice has been given of its entry with some other Delegate," shall be inserted.

Addition of sections after section 253 of same Act.

7. After section 253 of the said Act, the following sections shall be added:—

"253A. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

"*Explanation.*—By 'contention' is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf to oppose the proceeding.

"253B. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter, in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in

relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

"253C. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge."

Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.

8. In the said Act, sections 254 and 255, respectively, after the words "I, Judge of the District of", the words "(or Delegate appointed for granting probate or letters of administration in *(here insert the limits of the Delegate's jurisdiction)*)"; and in section 308, after the words "District Judge by whom" the words "or by whose District Delegate" shall be inserted.

9. In the said Act, sections 246, 250, 255 and 259, after the words "District Judge," and in section 250 and section 254 (when it first occurs) after the word "Judge," the words "or District Delegate" shall be inserted respectively.

Introduction of the words "or District Delegate" in certain sections of same Act.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 21st January, 1881, and is hereby promulgated for general information:—

ACT No. VII of 1881.

An Act to amend Bengal Act No. IX of 1880 (the Cess Act, 1880).

- WHEREAS it is expedient to amend Bengal Act No. IX of 1880 (the Cess Act, 1880); It is hereby enacted as follows:—

1. In the said Act, after section sixty-four, the following sections shall be inserted, and shall be deemed to have been so inserted on and from the date on which such Act came into force:—

“64A. All sums due to the holder of any estate or tenure under the provisions of this chapter, in respect of any land held rent-free, may be recovered by such holder from any owner or holder of such rent-free land, or from any occupier of the same, by any

means and any process by which the amount might be recovered if it were due on account of rent of a transferable tenure or holding, and subject to the same rules as to limitation:

“Provided that, if any such objection as is mentioned in section 53, has been made before the Collector, no proceedings shall be commenced, and no proceedings which have been commenced shall be continued, for recovery of cess in respect of the lands which are the subject of such objection, until such objection shall have been disposed of by the Collector.

“64B. In every suit for the recovery of any such sum, the person to whom the sum is due may proceed at his option either against the owner or holder of the rent-free land in respect of which such amount is due, or against the occupier thereof; and any decree obtained in such suit against any occupier of such land shall have the same effect and be followed by the same consequences in respect of the execution of such decree against the owner or holder of such land, and in respect of the sale of such land in such execution, as if the suit had been brought and the decree given against such owner or holder of such land, but shall have effect against such occupier personally so long only as he remains in occupation of such land, and no longer.”

D. FITZPATRICK,
Secy. to the Govt. of India.



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Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 15th January, 1881, and is hereby promulgated for general information:—

ACT No. III OF 1881.

An Act to provide for certain matters relating to Securities of the Government of India.

WHEREAS the Governor General in Council has determined to issue, in respect of the four and a half per cent. loan of 1880, certificates declaring the bearers thereof entitled to the principal sums specified therein, and coupons for the interest payable on such principal sums;

and whereas the Governor General in Council may from time to time desire to issue like certificates, with or without like coupons, in respect of other loans;

and whereas it is expedient to declare the mode in which the title to such certificates and coupons shall be transferable;

and whereas it is also expedient to provide for certain other matters relating to all securities of the Government of India; It is hereby enacted as follows:—

Short title.

1. This Act may be called "The Indian Securities Act, 1881"; and shall come into force at once.

Commencement.

2. In this Act, "Government securities" includes promissory notes, debentures, loan-certificates, coupons and all other securities issued by the Government of India, whether before or after the passing of this Act.

3. Whenever the Governor General in Council has issued, in respect of any loan, a certificate declaring the bearer thereof to be entitled to the portion of the loan therein expressed, or a coupon for any amount payable as interest on any portion of such loan, the title to such certificate or coupon may be transferred as if the certificate or coupon were a promissory note payable to bearer;

and, on payment, by or on behalf of the Government, to the bearer of such certificate or coupon, of the amount expressed therein, at or after the date on which it becomes due, the Government shall be discharged as if such certificate or coupon were a promissory note payable to bearer.

4. No notice of any trust in respect of any Government security shall be receivable by the Government.

5. No person shall, merely by reason of his having endorsed any Government security, be liable to pay any money due, whether on account of principal or interest, thereunder.

6. The signature of the officer of the Government of India authorized to sign any Government securities on behalf of the Government may be printed, engraved or lithographed, or impressed by such other mechanical process as the Governor General in Council may direct, on such securities.

Any such signature so printed, engraved, lithographed or otherwise impressed shall be as valid as if the same had been subscribed in the proper handwriting of such officer.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 15th January, 1881, and is hereby promulgated for general information:—

ACT No. IV OF 1881.

An Act to enhance the rate of Port-dues leviable at Madras.

WHEREAS it has been determined to construct an artificial harbour for the port of Madras and to defray a portion of the interest on the principal sum expended on the construction of such harbour and of the annual expenses of maintaining the same out of the dues leviable on sea-going vessels of fifteen tons and upwards entering the said port:

And whereas the maximum rate of such dues is fixed by the Indian Ports Act, 1875, section forty-five, and the third part of the first schedule thereto annexed, and the amount of such rate is insufficient to defray such portion of the said interest and expenses in addition to the other charges to meet which the said dues are applicable:

And whereas it is therefore necessary to enhance, to the extent hereinafter mentioned, the maximum rate of dues so leviable;

It is hereby enacted as follows:—

1. This Act may be called "The Madras Port-dues Act, 1881"; and
It shall come into force as soon as the said harbour is, in the opinion of the Local Government, open for the use of sea-going vessels of fifteen tons and upwards, and the said Government has published, in the *Fort St. George Gazette*, a notification to that effect.

2. In the Indian Ports Act, 1875, first schedule, Part III, the following amendments shall be made, that is to say:—

(a) in the first column, the numeral and word "9, Madras" shall be omitted;

(b) in the first column, above the heading "*Eastern Group*," the word "Madras" shall be inserted; and

(c) opposite the word "Madras" so inserted there shall be inserted—

(1) in the second column, the words "sea-going vessels of fifteen tons and upwards"; and

(2) in the third column, the words "not exceeding eight annas per ton: Provided that, in the case of vessels employed in the coasting trade not being steamers, the rates shall be one-half the rates chargeable in respect of other vessels."

3. The provisions contained in the fourth column of the said Part shall, so far as they are applicable, apply to the Port of Madras.

D. FITZPATRICK,
Secy. to the Govt. of India.

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An Act to provide for the grant of Probates of Wills and Letters of Administration to the estates of certain deceased persons.

WHEREAS it is expedient to provide for the grant of probate of wills and letters of administration to the estates of deceased persons in cases to which the

Preamble.

Indian Succession Act, 1865, does not apply; It is hereby enacted as follows:—

CHAPTER I. PRELIMINARY.

1. This Act may be called
Short title. "The Probate and Administration Act, 1881":
Local extent. It applies to the whole of British India;
and it shall come into
Commencement. force on the first day of April, 1881.

2. Chapters II to XIII, both inclusive, of this Act shall apply in the case of every Hindú, Muhammadan, Buddhist and person exempted under section 332 of the Indian Succession Act, 1865, dying before, on or after the said first day of April, 1881:

Provided that nothing herein contained shall be deemed to render invalid any transfer of property duly made before that day:

Provided also that, except in cases to which the Hindú Wills Act, 1870, applies, no Court in any local area beyond the limits of the towns of Calcutta, Madras and Bombay and the territories for the time being administered by the Chief Commissioner of British Burma, and no High Court in exercise of the concurrent jurisdiction over such local area hereby conferred, shall receive applications for probate or letters of administration until the Local Government has, with the previous sanction of the Governor General in Council, by a notification in the official Gazette, authorized it so to do.

3. In this Act, unless there be something repugnant in the subject to context,—

"Province" includes any division of British India having a Court of the last resort:

"minor" means any person subject to the Indian Majority Act, 1875, who has not attained his majority within the meaning

of that Act, and any other person who has not completed his age of eighteen years; and "minority" means the status of any such person:

"will" means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death:

"codicil" means an instrument made in relation to a will, and explaining, altering or adding to its dispositions. It is considered as forming an additional part of the will:

"specific legacy" means a legacy of specified property:

"demonstrative legacy" means a legacy directed to be paid out of specified property:

"probate" means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator:

"executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided:

"administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor: and
"District Judge" means the judge of a principal civil court of original jurisdiction.
"District Judge."

CHAPTER II.

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

4. The executor or administrator, as the case may be, of a deceased person, is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

But nothing herein contained shall vest in an executor or administrator any property of a deceased person which would otherwise have passed by survivorship to some other person.

5. When a will has been proved and deposited in a Court of competent jurisdiction, situated beyond the limits of the Province, whether in the British dominions, or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

6. Probate can be granted only to an executor appointed by the will.

7. The appointment may be express or by necessary implication.

Illustrations.

(a.) A wills that C be his executor if B will not. B is appointed executor by implication.

(b.) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law, C, and adds, "but should the within-named C be not living, I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(c.) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words:—"I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates." The nephew is appointed an executor by implication.

8. Probate cannot be granted to any person who is a minor or is of unsound mind.

9. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Illustration.

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first then to A.

10. If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.

Procedure when different executors appointed by codicil.

11. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

Accrual of representation to surviving executor.

12. Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

Effect of probate.

13. Letters of administration cannot be granted to any person who is a minor or is of unsound mind.

To whom administration may not be granted.

14. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

Effect of letters of administration.

15. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

Acts not validated by administration.

16. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued calling upon the executor to accept or renounce his executorship;

except that, when one or more of several executors has or have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

Exception.

17. The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the will appointing him executor.

Form and effect of renunciation of executorship.

18. If the executor renounce, or fail to accept, the executorship within the time limited for the acceptance or refusal thereof, the will may be proved and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.

Procedure where executor renounces or fails to accept within time limited.

19. When the deceased has made a will, but has not appointed an executor, or when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the will, or

when the executor dies after having proved the will but before he has administered all the estate of the deceased,

an universal or a residuary legatee may be admitted to prove the will, and letters of administra-

tion with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

20. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

Right to administration of representative of deceased residuary legatee.

21. When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

22. Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner herein-after mentioned, calling on the next-of-kin to accept or refuse letters of administration.

Citation before grant of administration to legatee other than universal or residuary.

23. When the deceased has died intestate, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

When several such persons apply for administration, it shall be in the discretion of the Court to grant it to any one or more of them.

When no such person applies, it may be granted to a creditor of the deceased.

CHAPTER III.

OF LIMITED GRANTS.

(a).—*Grants limited in Duration.*

24. When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

25. When the will has been lost or destroyed and no copy has been made nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

26. When the will is in the possession of a person, residing out of the Province in which application for probate is made, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original,

Probate of copy where original exists.

probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

27. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it be produced.

(b).—*Grants for the Use and Benefit of others having Right.*

28. When any executor is absent from the Province in which application is made, and there is no executor within the Province willing to act, letters of administration with the will annexed may be granted to the agent of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

29. When any person to whom, if present, letters of administration with the will annexed might be granted, is absent from the Province, letters of administration with the will annexed may be granted to his agent, limited as above-mentioned.

30. When a person entitled to administration in case of intestacy is absent from the Province, and no person equally entitled is willing to act, letters of administration may be granted to the agent of the absent person, limited as before mentioned.

31. When a minor is sole executor or sole residuary legatee, letters of administration with the will annexed may be granted to the legal guardian of such minor, or to such other person as the Court shall think fit, until the minor has attained his majority, at which period, and not before, probate of the will shall be granted to him.

32. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them has attained his majority.

33. If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate's estates, applicable in the case of the deceased, be a minor or lunatic, letters of administration with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the Court thinks fit to appoint, for the use and benefit of the minor or lunatic, until he attains majority or becomes of sound mind, as the case may be.

34. Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate; and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.

(c).—*For Special Purposes.*

35. If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and if he should appoint an agent to take administration on his behalf, the letters of administration with the will annexed shall accordingly be limited.

36. If an executor appointed generally give an authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration with the will annexed shall be limited accordingly.

37. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf.

38. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said suit, and until a final decree shall be made therein and carried into complete execution.

39. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator, to whom the same has or have been granted is absent from the Province within which the Court that has granted the probate or letters of administration is situate, such Court may grant, to any person whom it thinks fit, letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

40. In any case in which it appears necessary for preserving the property of a deceased person, the Court within whose district any of the property is situate may grant, to any

person whom such Court thinks fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

41. When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor is, at the time of the death of such person, resident out of the Province, and it appears to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who under ordinary circumstances would be entitled to a grant of administration, the Judge may, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, appoint such person as he thinks fit to be administrator; and in every such case letters of administration may be limited or not as the Judge thinks fit.

Appointment, as administrator, of person other than one who under ordinary circumstances would be entitled to administration.

(d).—*Grants with Exception.*

42. Whenever the nature of the case requires that an exception be made, probate of a will, or letters of administration with the will annexed, shall be granted subject to such exception.

Probate or administration with will annexed subject to exception.

43. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

Administration with exception.

(e).—*Grants of the Rest.*

44. Whenever a grant, with exception, of probate or letters of administration, with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

Probate or administration of rest.

(f).—*Grants of Effects unadministered.*

45. If the executor to whom probate has been granted has died leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

Grant of effects unadministered.

46. In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

Rules as to grants of effects unadministered.

47. When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

Administration when limited grant expired, and still some part of estate unadministered.

CHAPTER IV.

ALTERATION AND REVOCATION OF GRANTS.

48. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

What errors may be rectified by Court.

49. If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

Procedure where codicil discovered after grant of administration with will annexed.

50. The grant of probate or letters of administration may be revoked or annulled for just cause.

Revocation or annulment for just cause.

"Just cause."

Explanation.—Just cause is—

1st, that the proceedings to obtain the grant were defective in substance;

2nd, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case;

3rd, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;

4th, that the grant has become useless and non-operative through circumstances.

Illustrations.

(a). The Court by which the grant was made had no jurisdiction.

(b). The grant was made without citing parties who ought to have been cited.

(c). The will of which probate was obtained was forged or revoked.

(d). A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(e). A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(f). Since probate was granted, a later will has been discovered.

(g). Since probate was granted, a codicil has been discovered, which revokes or adds to the appointment of executors under the will.

(h). The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.

CHAPTER V.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

51. The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

Jurisdiction of District Judge in granting and revoking probates, &c.

52. The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe:

Power to appoint Delegate of District Judge to deal with non-contentious cases.

Provided that, in the case of High Courts not established by Royal Charter, such appointment be

made with the previous sanction of the Local Government.

Persons so appointed shall be called "District Delegates."

53. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

54. The District Judge may order any person to produce and bring into Court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person;

and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct him to attend for the purpose of being examined respecting the same,

and he shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code, in case of default in not attending or in not answering such questions or not bringing in such paper or writing as he would have been subject to in case he had been a party to a suit, and had made such default,

and the costs of the proceeding shall be in the discretion of the Judge.

55. The proceedings of the Court of the District Judge, in relation to the granting of probate and letters of administration, shall, except as hereinafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the Code of Civil Procedure.

56. Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his

Court, if it appears by a petition, verified as hereinafter mentioned, of the person applying for the same that the testator or intestate, as the case may be, had at the time of his decease a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Judge.

57. When the application is made to the Judge of a District in which the deceased had no fixed abode at the time of his death, the Judge may in his discretion refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, grant them absolutely, or limited to the property within his own jurisdiction.

58. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in

any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death had his fixed place of abode within the jurisdiction of such Delegate.

59. Probate or letters of administration shall have effect over all the property, moveable or immoveable, of the deceased throughout the Province in which the same is granted, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted:

Provided that probates and letters of administration granted by a High Court established by Royal Charter, or by the Chief Court of the Panjáb, or by the Court of the Recorder of Rangoon, shall, unless otherwise directed by the grant, have like effect throughout the whole of British India.

60. Whenever a grant of probate or letters of administration is made by a Court with such effect as last aforesaid, the Registrar, or such other officer as the Court making the grant appoints in this behalf, shall send to each of the other Courts empowered to make such grants, a certificate to the following effect:—

I, A. B., Registrar [or as the case may be] of the High Court of Judicature at [or as the case may be], hereby certify that on the day of 188 the High Court of Judicature at [or as the case may be] granted probate of the will [or letters of administration of the estate] of C. D., late of deceased, to E. F. of and G. H. of, and that such probate [or letters] has [or have] effect over all the property of the deceased throughout the whole of British India;

and such certificate shall be filed by the Court receiving the same.

61. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration, and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

62. Application for probate or for letters of administration with the will annexed shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the will, or, in the cases mentioned in sections twenty-four, twenty-five and twenty-six, a copy, draft or statement of the contents thereof annexed, and stating

the time of the testator's death,

that the writing annexed is his last will and testament, or as the case may be, that it was duly executed, the amount of assets which are likely to come to the petitioner's hands; and, where the application is for probate, that the petitioner is the executor named in the will. In addition to these particulars, the petition shall further state,

when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge; and,

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

63. In cases wherein the will, copy or draft is

In what cases translation of will to be annexed to petition. written in any language other than English, or than that in ordinary use in proceedings

before the Court, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed; or, if the will, copy or draft be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person

Verification of translation by person other than Court translator.

in the following manner:—

"I (A. B.) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."

64. Application for letters of administration

Petition for letters of administration. shall be made by petition distinctly written as aforesaid, and stating

the time and place of the deceased's death, the family or other relatives of the deceased, and their respective residences,

the right in which the petitioner claims, the amount of assets which are likely to come to the petitioner's hands.

In addition to these particulars the petition shall further state,

when the application is to a District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge; and,

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

65. Every person applying to any of the Courts

Additional statements in petition for probate, &c. mentioned in the proviso to section fifty-nine for probate of a will or letters of administration

of an estate, intended to have effect throughout British India, shall state in his petition, in addition to the matters respectively required by sections sixty-two and sixty-four, that to the best of his belief no application has been made to any other Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid,

or, where any such application has been made, the Court to which it was made, the person or

persons by whom it was made, and the proceedings (if any) had thereon.

And the Court to which any application is made under the proviso to section fifty-nine may, if it think fit, reject the same.

66. The petition for probate or letters of ad-

Petition for probate or administration to be signed and verified. ministration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner or to the like effect:—

"I (A. B.), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief."

67. Where the application is for probate, or for

Verification of petition for probate by one witness to will. letters of administration with the will annexed, the petition shall also be verified by

at least one of the witnesses to the will (when procurable), in the manner or to the effect following:—

"I (C. D.), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (or mark) thereto (as the case may be) (or that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence)."

68. If any petition or declaration which is here-

Punishment for false averment in petition or declaration. by required to be verified contains any averment which

the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

District Judge may examine petitioner in person,

69. In all cases it shall be

lawful for the District Judge or District Delegate, if he thinks fit,

to examine the petitioner in person upon oath, and also

to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings

before the grant of probate or letters of administration.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Collector of the District, and otherwise published or made known in such manner as the Judge or Delegate issuing the same may direct.

70. Caveats against the grant of probate or letters

Caveats against grant of probate or administration. of administration may be lodged with the District Judge or a District Delegate;

and immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased had his fixed place of abode at the time of his death, and to any other Judge or District Dele-

gate to whom it may appear to the District Judge expedient to transmit the same.

Form of caveat.

71. The caveat shall be to the following effect:—

“Let nothing be done in the matter of the estate of *A. B.*, late of , deceased, who died on the day of at without notice to *C. D.* of .”

72. No proceeding shall be taken on a petition

After entry of caveat, no proceeding taken on petition until after notice to caveator.

for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom the application has been made, or notice thereof has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

73. A District Delegate shall not grant pro-

District Delegate when not to grant probate or administration.

bate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

Explanation.—By “contention” is understood the appearance of any one in person, or by his recognized agent or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

74. In every case in which there is no conten-

Power to transmit statement to District Judge in doubtful cases where no contention.

tion, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

75. In every case in which there is contention,

Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.

or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge.

76. Whenever it appears to the Judge or Dis-

Grant of probate to be under seal of Court.

trict Delegate that probate of a will should be granted, he shall grant the same under the seal of his Court in manner following:—

“I,

Form of such grant.

Judge of the District of

[or Delegate appointed for granting probate or letters of

administration in (*here insert the limits of the Delegate's jurisdiction*)] hereby make known that on the day of in the year the last will of , late of , a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to , the executor in the said will named, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date.

The day of 18 .”

77. Whenever it appears to the District

Grant of letters of administration to be under seal of Court.

Judge or District Delegate that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he shall grant the same under the seal of his Court in manner following:—

“I, , Judge of the District of

Form of such grant.

[or Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)] hereby make known that on the day of letters of administration (with or without the will annexed, as the case may be) of the property and credits of , late of , deceased, were granted to , the father (*or as the case may be*) of the deceased, he having undertaken to administer the same, and to make a true inventory of the said property and credits, and to exhibit the same in this Court at or before the expiration of six months from the date of this grant, and also to render a true account of the said property and credits within one year from the same date.

The day of 18 .”

78. Every person to whom any grant of letters

Administration-bond.

of administration is committed, and, if the Judge so direct, any person to whom probate is granted, shall give a bond to the Judge of the District Court to enure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge from time to time by any general or special order directs.

79. The Court may, on application made by

Assignment of administration-bond.

petition and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit, assign the same to some proper person, who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

80. No probate of a will shall be granted until

Time before which probate or administration shall not be granted.

after the expiration of seven clear days, and no letters of administration shall be grant-

ed until after the expiration of fourteen clear days, from the day of the testator or intestate's death.

81. Until a public registry for wills is established, every District Judge and District Delegate shall file and preserve among the records of his Court all original wills of which probate or letters of administration with the will annexed may be granted by him: and the Local Government shall make regulations for the preservation and inspection of the wills so filed as aforesaid.

82. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the Province in which the same may have been granted, until such probate or letters of administration shall have been recalled or revoked.

83. In any case before the District Judge in which there is contention, the proceeding shall take, as nearly as may be, the form of a suit, according to the provisions of the Code of Civil Procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

84. Where any probate is, or letters of administration are, revoked, all payments *bond fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same;

and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself out of the assets of the deceased in respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

85. Notwithstanding anything hereinbefore contained, it shall, except in cases to which the Hindú Wills Act, 1870, applies, be in the discretion of the Court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under this Act.

86. Every order made by a District Judge or District Delegate by virtue of the powers hereby conferred upon him shall be subject to appeal to the High Court under the rules contained in the Code of Civil Procedure applicable to appeals.

87. The High Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

CHAPTER VI.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

88. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same powers for the recovery of debts due to him at the time of his death, as the deceased had when living.

89. All demands whatsoever, and all rights to prosecute or defend any suit or other proceeding, existing in favour of or against a person at the time of his decease survive to and against his executors or administrators, except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party, and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

Illustration.

(a). A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having instituted any suit. The cause of action does not survive.

90. An executor or administrator has power, with the consent of the Court by which the probate or letters of administration was or were granted, to dispose of the property of the deceased, either wholly or in part, in such manner as he thinks fit:

Provided that the Court may, when granting probate or letters of administration, exempt the executor or administrator from the necessity of obtaining such consent as to the whole or any specified part of the assets of the deceased.

Illustrations.

(a). The deceased has made a specific bequest of part of his property. The executor, not having assented to the bequest, sells the subject of it with the consent of the Court. The sale is valid.

(b). The executor, in the exercise of his discretion, mortgages a part of the immoveable estate of the deceased with the consent of the Court. The mortgage is valid.

91. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

92. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary in the will or grant of letters of administration, be exercised by any one of them who has proved the will or taken out administration.

Illustrations.

(a). One of several executors has power to release a debt due to the deceased.

(b). One has power to surrender a lease.

(c). One has power to sell the property of the deceased, moveable or immoveable.

(d). One has power to assent to a legacy.

(e). One has power to endorse a promissory note payable to the deceased.

(f). The will appoints A, B, C, and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

93. Upon the death of one or more of several executors or administrators, all the powers of the office become, in the absence of any direction to the contrary in the will or grant of letters of administration, vested in the survivors or survivor.

94. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

95. An administrator during minority has all the powers of an ordinary administrator.

96. When probate or letters of administration shall have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

CHAPTER VII.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

97. It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

98. An executor or administrator shall, within six months from the grant of probate or letters of administration, exhibit in the Court by which the same has or have been granted an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person or persons to which the executor or administrator is entitled in that character, and shall in like manner, within one year from the date aforesaid, exhibit an account of the estate, showing the assets that have come to his hands, and the manner in which they have been applied or disposed of.

99. In all cases where it is sought to obtain a grant of probate or letters of administration intended to have effect throughout the whole of British India, the executor, or the person applying for administration shall include in the inventory of the effects of the deceased all his moveable or immoveable property situate in British India:

And the value of such property situate in each Province shall be separately stated in such inventory, and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within British India.

100. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

101. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and

death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

102. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

103. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domestic servant are next to be paid, and then the other debts of the deceased according to their respective priorities (if any).

104. Save as aforesaid, no creditor is to have a right of priority over and rateably other.

But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

105. Debts of every description must be paid before any legacy.

106. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

107. If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions;

and, in the absence of any direction to the contrary in the will, the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

108. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

109. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

110. If the assets are not sufficient to answer Rateable abatement of the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Illustration.

A has bequeathed to B a diamond-ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B, and rupees 666-10-8 to C.

111. For the purpose of abatement, a legacy Legacies treated as for life, a sum appropriated general for purpose of by the will to produce an abatement. annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

CHAPTER VIII.

OF THE EXECUTOR'S ASSENT TO A LEGACY.

112. The assent of the executor is necessary to Assent necessary to complete a legatee's title to complete legatee's title, his legacy.

Illustrations.

(a). A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(b). A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

113. The assent of the executor to a specific bequest shall be sufficient Effect of executor's assent to specific legacy, to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

This assent may be verbal, and it may be either Nature of assent. express or implied from the conduct of the executor.

Illustrations.

(a). A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(b). The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(c). A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(d). Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(e). A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

114. The assent of an executor to a legacy may Conditional assent. be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Illustrations.

(a). A bequeathes to B his lands of Sultánpur, which at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(b). The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

115. When the executor is a legatee, his assent Assent of executor to to his own legacy is necessary to complete his title to his own legacy. it, in the same way as it is required when the bequest is to another person and his assent may in like manner be express or implied.

Assent shall be implied if in his manner of Implied assent. administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

Illustration.

An executor takes the rent of a house or the interest of Government-securities bequeathed to him, and applies it to his own use. This is assent.

116. The assent of the executor to a legacy Effect of executor's assent, gives effect to it from the death of the testator.

Illustrations.

(a). A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(b). A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

117. An executor is not bound to pay or deliver Executor when to any legacy until the expiration of one year from the testator's death, deliver legacies.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

CHAPTER IX.

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

118. Where an annuity is given by the will, Commencement of annuity when no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

119. Where there is a direction that the annuity When annuity, to be shall be paid quarterly or paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death, and shall, if the executor think fit, be paid when due; but the executor shall not be bound to pay it till the end of the year.

120. Where there is a direction that the first Date of successive payments when first payment directed to be made within given time, or on day certain. payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made; and if the annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

CHAPTER X.

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

121. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

122. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

The intermediate interest shall form part of the residue of the testator's estate.

123. Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, a Government-annuity of the specified amount shall be purchased, or,

if no such annuity can be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct.

124. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee (if any) on his giving sufficient security for the payment of the legacy if it shall become due.

125. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

126. Such conversion and investment as are contemplated by the last preceding section shall be made at such times and in such manner as the executor in his discretion thinks fit;

and, until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of six per cent. per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

127. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the

executor or administrator shall pay or deliver the same into the Court of the District Judge by whom, or by whose District Delegate, the probate was, or letters of administration with the will annexed were, granted, to the account of the legatee, unless the legatee be a ward of the Court of Wards; and, if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account;

and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid;

and such money, when paid in, shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

CHAPTER XI.

OF THE PRODUCE AND INTEREST OF LEGACIES.

128. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Legatee's title to produce of specific legacy.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy.

The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(a). A bequeathes his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(b). A bequeathes his Government-securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(c). The testator bequeathes all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18 forms part of the residue.

129. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy.

Such income goes as undisposed of.

Illustrations.

(a). The testator bequeathes the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(b). The testator bequeathes the residue of his property to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

130. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Interest when no time fixed for payment of general legacy.

Exceptions.—(1). Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2). Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3). Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

131. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed.

The interest up to such time forms part of the residue of the testator's estate.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance, or unless the will contains a direction to the contrary.

132. The rate of interest shall be six per cent. per annum.

133. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

134. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

CHAPTER XII.

OF THE REFUNDING OF LEGACIES.

135. An executor who has paid a legacy under the order of a Judge, is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies.

136. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

137. When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets; in such case, if further time has, under the second clause of this section, been allowed for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within

the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as is requisite to make up for the delay caused by such fraud.

138. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

139. Where an executor or administrator has given such notices as the High Court may, by any general rule to be made from time to time, prescribe, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he has not had notice at the time of such distribution;

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

140. A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies, and whether the payment of the legacy by the executor was voluntary or not.

141. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund under the last preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

142. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent; but, if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

143. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

144. The refunding shall in all cases be without interest.

145. The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

CHAPTER XIII.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

146. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Illustrations.

(a). The executor pays out of the estate an unfounded claim. He is liable to make good the loss caused by the payment.

(b). The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss caused by the neglect.

(c). The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

147. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

Illustrations.

(a). The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount so lost.

(b). The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount of the debt.

CHAPTER XIV.

MISCELLANEOUS.

148. In Chapters VIII, IX, X and XII of this Act the provisions as to an executor shall apply also to an administrator with the will annexed.

Saving-clause.

149. Nothing herein contained shall—

(a) validate any testamentary disposition which would otherwise have been invalid;

(b) invalidate any such disposition which would otherwise have been valid;

(c) deprive any person of any right of maintenance to which he would otherwise have been entitled; or

(d) affect the rights, duties and privileges of the Administrator General of Bengal, Madras or Bombay.

150. No proceedings to obtain probate of a will, or letters of administration to the estate, of any Hindú, Muhammadan, Buddhist or person exempted under section 332 of the Indian Succession Act, 1865, shall be instituted in any Court in British India except under this Act.

151. In Act No. XXVII of 1860 (*An Act for facilitating the collection of debts on successions, and for the security of parties paying debts to the representatives of deceased persons*),

sections 15 and 16 and the proviso to section 13 shall be repealed.

152. The grant of probate or letters of administration under this Act in respect of any property shall be deemed to supersede any certificate previously granted in respect of the same property under the said Act No. XXVII of 1860, or Bombay Regulation VIII of 1827.

Grant of probate or administration to supersede certificate under Act XXVII of 1860, or Bombay Regulation VIII of 1827.

Provided that, when any certificate is superseded under this section, all payments made to the holder of such certificate in ignorance of such supersession shall be held good against claims under the probate or letters of administration.

153. In the Court-fees Act, 1870, schedule I, Nos. 11 and 12, in the third column, after the words "amount or value," the following shall be inserted, namely:—

"Provided that, when after a certificate has been granted as aforesaid in respect of any estate, probate or letters of administration is or are granted in respect of the same estate, the fee payable in respect of such latter grant shall be reduced by the amount of the fee paid in respect of the former grant."

154. The following amendments shall be made in the Hindú Wills Act, 1870 (namely):—

(a). For the portion of section two commencing with the words "sections one hundred and seventy-nine" and ending with the words "administrator with the will annexed," the words "and section one hundred and eighty-seven" shall be substituted.

(b). The third clause of section three and the last clause of section six shall be repealed.

(c). In section six, for the words "one hundred and three and one hundred and eighty-two" the words "and one hundred and three" shall be substituted.

155. All grants of probate of the will or letters of administration to the estate of any deceased Hindú, Muhammadan or Buddhist, or any person exempted under section 332 of the Indian Succession Act, 1865, which, before this Act comes into force have been made in British Burma, shall, whenever such grant would have been lawful if this Act had been in force, be deemed to have been made in accordance with law.

156. In the second schedule to the Indian Limitation Act, 1877, No. 43, after the figures "321," the following shall be inserted, namely—"or under the Probate and Administration Act, 1881, section 139 or 140."

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 21st January, 1881, and is hereby promulgated for general information:—

ACT No. VI OF 1881.

An Act to make further provision for the grant of Probate and Letters of Administration in non-contentious cases.

WHEREAS it is expedient to make further provision for the grant of probate and letters of administration in non-contentious cases; It is hereby enacted as follows:—

1. This Act may be called "The District Delegates Act, 1881":

It extends to the whole of British India;

and it shall come into force on the first day of April, 1881.

2. After section 235 of the Indian Succession Act, 1865, the following section shall be added:—

"235A. The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit, to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe:

"Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

"Persons so appointed shall be called 'District Delegates'."

3. After section 241 of the said Act, the following section shall be added:—

"241A. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death resided within the jurisdiction of such Delegate."

4. To sections 244 and 246 of the said Act, respectively, the following words shall be added:—
"and when the application

is to a District Delegate, the petition shall further state that the deceased at the time of his death resided within the jurisdiction of such Delegate."

Substitution of section for section 251 of same Act.

5. For section 251 of the said Act, the following section shall be substituted:—

"251. Caveats against the grant of probate or administration may be lodged with the District Judge or a District Delegate; and immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge; and immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased resided at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same."

6. In section 253 of the said Act, after the word "Judge" the words "or officer," and after the word "made" the words "or notice has been given of its entry with some other Delegate," shall be inserted.

Addition of sections after section 253 of same Act.

7. After section 253 of the said Act, the following sections shall be added:—

"253A. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

"Explanation.—By 'contention' is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf to oppose the proceeding.

"253B. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in

relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

“ 253C. In every case in which there is conten-

Procedure where there is contention, or District Delegate thinks probate or letters of administration should be refused in his Court.

tion, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge.”

8. In the said Act, sections 254 and 255, respectively, after the words “I, Judge of the District of _____,” the words “(or Delegate appointed for granting probate or letters of administration in *(here insert the limits of the Delegate's jurisdiction)*)”; and in section 308, after the words “District Judge by whom” the words “or by whose District Delegate” shall be inserted.

9. In the said Act, sections 246, 250, 255 and 259, after the words “District Judge,” and in section 250 and section 254 (when it first occurs) after the word “Judge,” the words “or District Delegate” shall be inserted respectively.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 21st January, 1881, and is hereby promulgated for general information:—

ACT NO. VII OF 1881.

An Act to amend Bengal Act No. IX of 1880 (the Cess Act, 1880).

WHEREAS it is expedient to amend Bengal Act No. IX of 1880 (the Cess Act, 1880); It is hereby enacted as follows:—

1. In the said Act, after section sixty-four, the following sections shall be inserted, and shall be deemed to have been so inserted on and from the date on which such Act came into force:—

“64A. All sums due to the holder of any estate or tenure under the provisions of this chapter, in respect of any land held rent-free, may be recovered by such holder from any owner or holder of such rent-free land, or from any occupier of the same, by any

means and any process by which the amount might be recovered if it were due on account of rent of a transferable tenure or holding, and subject to the same rules as to limitation:

“Provided that, if any such objection as is mentioned in section 53, has been made before the Collector, no proceedings shall be commenced, and no proceedings which have been commenced shall be continued, for recovery of cess in respect of the lands which are the subject of such objection, until such objection shall have been disposed of by the Collector.

“64B. In every suit for the recovery of any such sum, the person to whom the sum is due may proceed at his option either against the owner or holder of the rent-free land in respect of which such amount is due, or against the occupier thereof; and any decree obtained in such suit against any occupier of such land shall have the same effect and be followed by the same consequences in respect of the execution of such decree against the owner or holder of such land, and in respect of the sale of such land in such execution, as if the suit had been brought and the decree given against such owner or holder of such land, but shall have effect against such occupier personally so long only as he remains in occupation of such land, and no longer.”

D. FITZPATRICK,
Secy. to the Govt. of India.



The Gazette of India.

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CALCUTTA, SATURDAY, FEBRUARY 12, 1881.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 5th February, 1881, and is hereby promulgated for general information:—

ACT No. VIII OF 1881.

THE PETROLEUM ACT, 1881.

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THE SCHEDULE.

An Act to regulate the importation, possession and transport of Petroleum and other fluids of a like nature.

WHEREAS it is expedient to regulate the importation, possession and transport of petroleum and other fluids of a like nature; It is hereby enacted as follows:—

Preliminary.

- Short title. 1. This Act may be called "The Petroleum Act, 1881";
- Commencement. and it shall come into force on the first day of July, 1881.

The provisions of this Act relating to dangerous petroleum, and the importation of petroleum, extend to the whole of British India. The rest of this Act extends only to such local areas as the Local Government may, from time to time, by notification in the official Gazette, direct.

2. The Indian Ports Act, 1875, section thirty-seven, and Bengal Act No. III of 1865 (to make better provision for the prevention of injury from fire in Ports, and to provide for the safe keeping of inflammable Oils in Ports and places within the Provinces under the control of the Lieutenant-Governor of Bengal) are hereby repealed.

3. In this Act, unless there is something repugnant in the subject or context,—
- Interpretation-clause.

"petroleum" includes also the liquids commonly known by the names of rock oil, Rangoon oil, Burma oil, kerosine, paraffine oil, mineral oil, petrolene, gasoline, benzol, benzoline, benzine and any inflammable liquid that is made from petroleum, coal, schist, shale, peat or any other bituminous substance, or from any products of petroleum, but it does not include any oil ordinarily used for lubricating purposes, and having its flashing point at or above two hundred and fifty degrees of Fahrenheit's thermometer.

Explanation.—The flashing point of petroleum means the lowest temperature at which the petroleum yields a vapour which will furnish a momentary flash or flame when tested with the apparatus and in the manner described in the Schedule hereto annexed:

"dangerous petroleum" means petroleum having its flashing point below seventy-three degrees of Fahrenheit's thermometer:

"import:" "import" means to bring into British India by sea or land:

and "importation" means the bringing into British India as aforesaid:

"transport" means to remove from one place to another within British India.

Dangerous Petroleum.

4. No quantity of dangerous petroleum exceeding forty gallons shall be imported or transported, or kept by any one person or on the same premises, except under, and in accordance with the conditions of, a license from the Local Government granted as next hereinafter provided.

Application for license to import, transport or possess such petroleum. Every application for such a license shall be in writing, and shall declare—

(a) the quantity of such petroleum which it is desired to import, transport or possess, as the case may be;

(b) the purpose for which the applicant believes that such petroleum will be used; and

(c) that petroleum other than dangerous petroleum cannot be used for such purpose.

If the Local Government sees reason to believe that such petroleum will be used for such purpose, and that no petroleum other than dangerous petroleum can be used for such purpose, it may grant such license for the importation, transport or possession (as the case may be) of such petroleum, absolutely or subject to such conditions as it thinks fit.

5. No quantity of dangerous petroleum equal to or less than forty gallons shall be kept or transported without a license:

Provided that nothing in this section shall apply in any case when the quantity of such petroleum kept by any one person or on the same premises, or transported, does not exceed three gallons, and such petroleum is placed in separate glass, earthenware or metal vessels, each of which contains not more than a pint and is securely stopped.

Vessels containing dangerous petroleum to be marked. 6. All dangerous petroleum—

(a) which is kept at any place after seven days from the date on which it is imported, or

(b) which is transported, or

(c) which is sold or exposed for sale, shall be contained in vessels which shall bear an indelible mark or a label in conspicuous characters, stating the nature of the contents thereof.

Petroleum generally.

7. The Local Government may, from time to time, make rules consistent with this Act to regulate the importation of petroleum, and in particular—

Power to make rules as to the importation of petroleum.

(a) for ascertaining the quantity and description of any petroleum on board a ship;

(b) to provide for the delivery, by the master of a ship or the consignees of the cargo, of samples of petroleum before such petroleum is landed from such ship, and for the testing thereof;

(c) to determine the ports at which only petroleum may be imported; and

(d) to regulate the time and mode of, and the precautions to be taken on, landing or transhipping any petroleum.

In this section—

"ship" includes anything made for the conveyance by water of human beings or property:

"ship:"

"master" includes every person (except a Pilot or Harbour Master) having for the time being the charge or control of a ship.

"master:"

8. No quantity of petroleum exceeding five hundred gallons shall be kept by any one person or on the same premises or shall be transported except under, and in accordance with the conditions of, a license granted under this Act.

Possession and transport of petroleum.

9. The Local Government may, from time to time, make rules consistent with this Act as to the granting of licenses to possess or transport petroleum in cases where such licenses are by law required.

Such rules may provide for the following among other matters, that is to say—

in the case of licenses to possess petroleum—

(a) the nature and situation of the premises for which they may be granted, and

(b) the inspection of such premises and the testing of petroleum found thereon;

in the case of licenses to transport petroleum—

(c) the manner in which the petroleum shall be packed, the mode of transit, and the route by which it is to be taken, and

(d) the stoppage and inspection of it during transit;

in the case of both such licenses—

(e) the authority by which the license may be granted;

(f) the fee to be charged for it;

(g) the quantity of petroleum it is to cover;

(h) the conditions which may be inserted in it;

(j) the time during which it is to continue in force; and

(k) the renewal of the license.

10. Any officer specially authorized by name or by virtue of his office in this behalf by the Local Government may require any dealer in petroleum to show him any place, and any of the vessels, in which any petroleum in his possession is stored or contained, to give him such assistance as he may require for examining the same, and to deliver to him samples of such petroleum on payment of the value of such samples.

Power to inspect and require dealer to sell samples.

11. When any such officer has, in exercise of the powers conferred by section ten, or by purchase, obtained a sample of petroleum in the possession of a

Notice to be given when officer proposes to test samples.

dealer, he may give a notice in writing to such dealer informing him that he is about to test such sample or cause the same to be tested with the apparatus and in the manner described in the schedule hereto annexed, at a time and place to be fixed in such notice, and that such person or his agent may be present at such testing.

12. On any such testing, if it appears to the officer or other person so testing that the petroleum from which such sample has been taken is or is not dangerous

Certificate as to result of such testing.

petroleum, such officer or other person may certify such fact, and the certificate so given shall be receivable as evidence in any proceedings which may be taken under this Act against the dealer in whose possession such petroleum was found, and shall, until the contrary is proved, be evidence of the fact stated therein; and a certified copy of such certificate shall be given gratis to the dealer at his request.

Penalties.

13. Any person who, in contravention of this Act or of any rules made hereunder, imports, possesses or transports any petroleum, and any person who otherwise contravenes any such rules or any condition contained in a license granted hereunder, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

14. Any person keeping, transporting, selling or exposing for sale petroleum in vessels not marked or labelled as prescribed by section six shall be punished with fine which may extend to fifty rupees.

15. Any dealer in petroleum who refuses or neglects to show to any officer authorized under section ten any place, or any of the vessels, in which petroleum in his possession is stored or contained, or to give him such assistance as he may require for examining the same, or to give him samples of such petroleum on payment of the value of such samples, shall be punished with fine which may extend to two hundred rupees.

16. In any case in which an offence under section thirteen or section fourteen has been committed, the convicting Magistrate may direct that—

(a) the petroleum in respect of which the offence has been committed, or

(b) where the offender is importing or transporting or is in possession of any petroleum exceeding the quantity (if any) which he is permitted to import, transport or possess, as the case may be, the whole of the petroleum which he is importing, or transporting, or is in possession of, shall, together with the tins or other vessels in which it is contained, be confiscated.

17. The criminal jurisdiction under this Act shall, in the towns of Calcutta, Madras and Bombay, be exercised by a Presidency Magistrate, and elsewhere by a Magistrate of the first class or (where specially empowered by the Local Government to

try cases under this Act) a Magistrate of the second class.

Miscellaneous.

18. All rules made by the Local Government under this Act shall be published in the official Gazette, and shall, on the expiry of one month from the date of such publication, have the force of law:

Provided that no such rule shall be so published without the previous sanction of the Governor General in Council.

19. The Governor General in Council may, from time to time, by notification in the *Gazette of India*, apply the whole or any portion of this Act to any inflammable fluid other than petroleum, and may by such notification fix, in substitution for the quantities of petroleum fixed by sections four, five and eight, the quantities of such fluid to which these sections shall apply.

The Governor General in Council may by a like notification cancel any notification issued under this section.

THE SCHEDULE.

Specification explanatory of the Test Apparatus.

The following is a description of the details of the apparatus:—

The oil-cup consists of a cylindrical vessel 2" diameter, $2\frac{2}{10}$ " height (internal), with outward projecting rim $\frac{5}{10}$ " wide, $\frac{3}{8}$ " from the top and $1\frac{1}{8}$ " from the bottom of the cup. It is made of gun-metal or brass (17 B. W. G.), tinned inside. A bracket, consisting of a short stout piece of wire, bent upwards and terminating in a point, is fixed to the inside of the cup to serve as a gauge. The distance of the point from the bottom of the cup is $1\frac{1}{8}$ ". The cup is provided with a close-fitting overlapping cover made of brass (22 B. W. G.) which carries the thermometer and test-lamp. The latter is suspended from two supports from the side by means of trunnions, upon which it may be made to oscillate: it is provided with a spout the mouth of which is $\frac{1}{16}$ " in diameter. The socket which is to hold the thermometer is fixed at such an angle, and its length is so adjusted that the bulb of the thermometer, when inserted to its full depth, shall be $1\frac{1}{8}$ " below the centre of the lid.

The cover is provided with three square holes, one in the centre $\frac{5}{10}$ " by $\frac{4}{10}$ ", and two smaller ones, $\frac{3}{10}$ " by $\frac{2}{10}$ ", close to the sides and opposite each other. These three holes may be closed and uncovered by means of a slide moving in grooves, and having perforations corresponding to those on the lid.

In moving the slide so as to uncover the holes, the oscillating lamp is caught by a pin fixed in the slide, and tilted in such a way as to bring the end of the spout just below the surface of the lid. Upon the slide being pushed back so as to cover the holes, the lamp returns to its original position.

Upon the cover, in front of, and in line with, the mouth of the lamp, is fixed a white bead the dimensions of which represent the size of the test flame to be used.

The bath or heated vessel consists of two flat-bottomed copper cylinders (24 B. W. G.), an inner one of 3" diameter and $2\frac{1}{2}$ " height, and an outer one of $5\frac{1}{8}$ " diameter and $5\frac{1}{8}$ " height; they are soldered to a circular copper plate (20 B. W. G.), perforated in the centre, which forms the top of the

bath, in such a manner as to enclose the space between the two cylinders, but leaving access to the inner cylinder. The top of the bath projects both outwards and inwards about $\frac{3}{8}$ ", that is, its diameter is about $\frac{3}{8}$ " greater than that of the body of the bath, while the diameter of the circular opening in the centre is about the same amount less than that of the inner copper cylinder. To the inner projection of the top is fastened, by six small screws, a flat ring of ebonite, the screws being sunk below the surface of the ebonite to avoid metallic contact between the bath and the oil-cup. The exact distance between the sides and bottom of the bath of the oil-lamp is $1\frac{1}{2}$ ". A split socket similar to that on the cover of the oil-cup, but set at a right angle, allows a thermometer to be inserted into the space between the two cylinders. The bath is further provided with a funnel, an overflow pipe, and two loop handles.

The bath rests upon a cast-iron tripod stand, to the ring of which is attached a copper cylinder or jacket (24 B. W. G.), flanged at the top, and of such dimensions that the bath, while firmly resting on the iron ring, just touches with its projecting top the inward-turned flange. The diameter of this outer jacket is $6\frac{1}{2}$ ". One of the three legs of the stand serves as support for the spirit-lamp, attached to it by means of a small swing bracket. The distance of the wick-holder from the bottom of the bath is 1".

Two thermometers are provided with the apparatus, the one for ascertaining the temperature of the bath, the other for determining the flashing-point. The thermometer for ascertaining the temperature of the water has a long bulb and a space at the top. Its range is from about 90° to 190° Fahrenheit. The scale (in degrees of Fahrenheit) is marked on an ivory back fastened to the tube in the usual way; it is fitted with a metal collar fitting the socket, and the part of the tube below the scale should have a length of about $3\frac{1}{2}$ " measured from the lower end of the scale to the end of the bulb. The thermometer for ascertaining the temperature of the oil is fitted with collar and ivory scale in a similar manner to the one described. It has a round bulb, a space at the top, and ranges from about 55° F. to 150° F.; it measures from end of ivory back to bulb $2\frac{1}{4}$ ".

NOTE.—A model apparatus is deposited at the office of the Chemical Examiner to Government at Calcutta.

Directions for applying the Test.

1. The test-apparatus is to be placed for use in a position where it is not exposed to currents of air or draughts.

2. The heating vessel or water-bath is filled by pouring water into the funnel until it begins to flow out at the spout of the vessel. The temperature of the water at the commencement of the test is to be 130° Fahrenheit, and this is attained in the first instance either by mixing hot and cold water in the bath, or in a vessel from which the bath is filled, until the thermometer which is provided for testing the temperature of the water gives the proper indication; or by heating the water with the spirit-lamp (which is attached to the stand of the apparatus) until the required temperature is indicated.

If the water has been heated too highly, it is easily reduced to 130° by pouring in cold water little by little (to replace a portion of the warm water) until the thermometer gives the proper reading.

When a test has been completed, this water-bath is again raised to 130° by placing the lamp underneath, and the result is readily obtained while the petroleum cup is being emptied, cooled, and refilled with a fresh sample to be tested. The lamp is then turned on its swivel from under the apparatus, and the next test is proceeded with.

3. The test-lamp is prepared for use by fitting it with a piece of flat plaited candlewick, and filling it with colza or rape-oil up to the lower edge of the opening of the spout or wick-tube. The lamp is trimmed so that when lighted it gives a flame of about 0.15 of an inch diameter, and this size of flame, which is represented by the projecting white bead on the cover of the oil-cup, is readily maintained by simple manipulation from time to time with a small wire trimmer.

When gas is available it may be conveniently used in place of the little oil-lamp, and for this purpose a test-flame arrangement for use with gas may be substituted for the lamp.

4. The bath having been raised to the proper temperature, the oil to be tested is introduced into the petroleum cup, being poured in slowly until the level of the liquid just reaches the point of the gauge which is fixed in the cup. In warm weather the temperature of the room in which the samples to be tested have been kept should be observed in the first instance, and, if it exceeds 65°, the samples to be tested should be cooled down (to about 60°) by immersing the bottle containing them in cold water, or by any other convenient method. The lid of the cup, with the slide closed, is then put on, and the cup is put into the bath or heating vessel. The thermometer in the lid of the cup has been adjusted so as to have its bulb just immersed in the liquid, and its position is not under any circumstances to be altered. When the cup has been placed in the proper position, the scale of the thermometer faces the operator.

5. The test-lamp is then placed in position upon the lid of the cup, the lead line or pendulum,* which has been fixed in a convenient position in front of the operator, is set in motion, and the rise of the thermometer in the petroleum cup is watched. When the temperature has reached about 66°, the operation of testing is to be commenced, the test-flame being applied once for every rise of one degree in the following manner:—

The slide is slowly drawn open while the pendulum performs three oscillations, and is closed during the fourth oscillation.

NOTE.—If it is desired to employ the test-apparatus to determine the flashing-points of oils of very low volatility, the mode of proceeding is to be modified as follows:—

The air-chamber which surrounds the cup is filled with cold water to a depth of $1\frac{1}{2}$ inches, and the heating vessel or water-bath is filled as usual, but also with cold water. The lamp is then placed under the apparatus and kept there during the entire operation. If a very heavy oil is being dealt with, the operation may be commenced with water previously heated to 120°, instead of with cold water.

* This pendulum is two (2) feet in length from the point of suspension to the centre of gravity of the weight.

D. FITZPATRICK,
Secy. to the Govt. of India.



The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, FEBRUARY 19, 1881.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 5th February, 1881, and is hereby promulgated for general information:—

ACT No. VIII OF 1881.

THE PETROLEUM ACT, 1881.

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THE SCHEDULE.

An Act to regulate the importation, possession and transport of Petroleum and other fluids of a like nature.

WHEREAS it is expedient to regulate the importation, possession and transport of petroleum and other fluids of a like nature; It is hereby enacted as follows:—

Preliminary.

1. This Act may be called "The Petroleum Act, 1881"; and it shall come into force on the first day of July, 1881.

The provisions of this Act relating to dangerous petroleum, and the importation of petroleum, extend to the whole of British India. The rest of this Act extends only to such local areas as the Local Government may, from time to time, by notification in the official Gazette, direct.

2. The Indian Ports Act, 1875, section thirty-seven, and Bengal Act No. III of 1865 (to make better provision for the prevention of injury from fire in Ports, and to provide for the safe keeping of Inflammable Oils in Ports and places within the Provinces under the control of the Lieutenant-Governor of Bengal) are hereby repealed.

3. In this Act, unless there is something repugnant in the subject or context,—

"petroleum" includes also the liquids commonly known by the names of rock oil, Rangoon oil, Burma oil, kerosine, paraffine oil, mineral oil, petroline, gasoline, benzol, benzoline, benzine and any inflammable liquid that is made from petroleum, coal, schist, shale, peat or any other bituminous substance, or from any products of petroleum,

but it does not include any oil ordinarily used for lubricating purposes, and having its flashing point at or above two hundred and fifty degrees of Fahrenheit's thermometer.

Explanation.—The flashing point of petroleum means the lowest temperature at which the petroleum yields a vapour which will furnish a momentary flash or flame when tested with the apparatus and in the manner described in the Schedule here-to annexed:

"dangerous petroleum" means petroleum having its flashing point below seventy-three degrees of Fahrenheit's thermometer:

"import:" "import" means to bring into British India by sea or land:

and "importation" means the bringing into British India as aforesaid:

"transport" means to remove from one place to another within British India.

Dangerous Petroleum.

4. No quantity of dangerous petroleum exceeding forty gallons shall be imported or transported, or kept by any one person or on the same premises, except under, and in accordance with the conditions of, a license from the Local Government granted as next hereinafter provided.

Application for license to import, transport or possess such petroleum. Every application for such a license shall be in writing, and shall declare—

(a) the quantity of such petroleum which it is desired to import, transport or possess, as the case may be;

(b) the purpose for which the applicant believes that such petroleum will be used; and

(c) that petroleum other than dangerous petroleum cannot be used for such purpose.

If the Local Government sees reason to believe

Power to grant license. that such petroleum will be used for such purpose, and that no petroleum other than dangerous petroleum can be used for such purpose, it may grant such license for the importation, transport or possession (as the case may be) of such petroleum, absolutely or subject to such conditions as it thinks fit.

5. No quantity of dangerous petroleum equal to or less than forty gallons shall be kept or transported without a license:

Provided that nothing in this section shall apply in any case when the quantity of such petroleum kept by any one person or on the same premises, or transported, does not exceed three gallons, and such petroleum is placed in separate glass, earthenware or metal vessels, each of which contains not more than a pint and is securely stopped.

Vessels containing dangerous petroleum to be marked. 6. All dangerous petroleum—

(a) which is kept at any place after seven days from the date on which it is imported, or

(b) which is transported, or

(c) which is sold or exposed for sale, shall be contained in vessels which shall bear an indelible mark or a label in conspicuous characters, stating the nature of the contents thereof.

Petroleum generally.

7. The Local Government may, from time to time, make rules consistent with this Act to regulate the importation of petroleum, and in particular—

Power to make rules as to the importation of petroleum.

(a) for ascertaining the quantity and description of any petroleum on board a ship;

(b) to provide for the delivery, by the master of a ship or the consignees of the cargo, of samples of petroleum before such petroleum is landed from such ship, and for the testing thereof;

(c) to determine the ports at which only petroleum may be imported; and

(d) to regulate the time and mode of, and the precautions to be taken on, landing or transshipping any petroleum.

In this section—

"ship" includes anything made for the conveyance by water of human beings or property:

"master" includes every person (except a Pilot or Harbour Master) having for the time being the charge or control of a ship.

8. No quantity of petroleum exceeding five hundred gallons shall be kept by any one person or on the same premises or shall be transported except under, and in accordance with the conditions of, a license granted under this Act.

Possession and transport of petroleum.

9. The Local Government may, from time to time, make rules consistent with this Act as to the granting of licenses to possess or transport petroleum in cases where such licenses are by law required.

Such rules may provide for the following among other matters, that is to say—

in the case of licenses to possess petroleum—

(a) the nature and situation of the premises for which they may be granted, and

(b) the inspection of such premises and the testing of petroleum found thereon;

in the case of licenses to transport petroleum—

(c) the manner in which the petroleum shall be packed, the mode of transit, and the route by which it is to be taken, and

(d) the stoppage and inspection of it during transit;

in the case of both such licenses—

(e) the authority by which the license may be granted;

(f) the fee to be charged for it;

(g) the quantity of petroleum it is to cover;

(h) the conditions which may be inserted in it;

(i) the time during which it is to continue in force; and

(k) the renewal of the license.

10. Any officer specially authorized by name or by virtue of his office in this behalf by the Local Government may require any dealer in petroleum to show him any place, and any of the vessels, in which any petroleum in his possession is stored or contained, to give him such assistance as he may require for examining the same, and to deliver to him samples of such petroleum on payment of the value of such samples.

11. When any such officer has, in exercise of the powers conferred by section ten, or by purchase, obtained a sample of petroleum in the possession of a

Notice to be given when officer proposes to test samples.

dealer, he may give a notice in writing to such dealer informing him that he is about to test such sample or cause the same to be tested with the apparatus and in the manner described in the schedule hereto annexed, at a time and place to be fixed in such notice, and that such person or his agent may be present at such testing.

12. On any such testing, if it appears to the officer or other person so testing that the petroleum from which such sample has been taken is or is not dangerous petroleum, such officer or other person may certify such fact, and the certificate so given shall be receivable as evidence in any proceedings which may be taken under this Act against the dealer in whose possession such petroleum was found, and shall, until the contrary is proved, be evidence of the fact stated therein; and a certified copy of such certificate shall be given gratis to the dealer at his request.

Penalties.

13. Any person who, in contravention of this Act or of any rules made hereunder, imports, possesses or transports any petroleum, and any person who otherwise contravenes any such rules or any condition contained in a license granted hereunder, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

14. Any person keeping, transporting, selling or exposing for sale petroleum in vessels not marked or labelled as prescribed by section six shall be punished with fine which may extend to fifty rupees.

15. Any dealer in petroleum who refuses or neglects to show to any officer authorized under section ten any place, or any of the vessels, in which petroleum in his possession is stored or contained, or to give him such assistance as he may require for examining the same, or to give him samples of such petroleum on payment of the value of such samples, shall be punished with fine which may extend to two hundred rupees.

16. In any case in which an offence under section thirteen or section fourteen has been committed, the convicting Magistrate may direct that—

(a) the petroleum in respect of which the offence has been committed, or

(b) where the offender is importing or transporting or is in possession of any petroleum exceeding the quantity (if any) which he is permitted to import, transport or possess, as the case may be, the whole of the petroleum which he is importing, or transporting, or is in possession of, shall, together with the tins or other vessels in which it is contained, be confiscated.

17. The criminal jurisdiction under this Act shall, in the towns of Calcutta, Madras and Bombay, be exercised by a Presidency Magistrate, and elsewhere by a Magistrate of the first class or (where specially empowered by the Local Government to

try cases under this Act) a Magistrate of the second class.

Miscellaneous.

18. All rules made by the Local Government under this Act shall be published in the official Gazette, and shall, on the expiry of one month from the date of such publication, have the force of law:

Provided that no such rule shall be so published without the previous sanction of the Governor General in Council.

19. The Governor General in Council may, from time to time, by notification in the *Gazette of India*, apply the whole or any portion of this Act to any inflammable fluid other than petroleum, and may by such notification fix, in substitution for the quantities of petroleum fixed by sections four, five and eight, the quantities of such fluid to which these sections shall apply.

The Governor General in Council may by a like notification cancel any notification issued under this section.

THE SCHEDULE.

Specification explanatory of the Test Apparatus.

The following is a description of the details of the apparatus:—

The oil-cup consists of a cylindrical vessel 2" diameter, $2\frac{2}{10}$ " height (internal), with outward projecting rim $\frac{5}{10}$ " wide, $\frac{3}{8}$ " from the top and $1\frac{3}{8}$ " from the bottom of the cup. It is made of gun-metal or brass (17 B. W. G.), tinned inside. A bracket, consisting of a short stout piece of wire, bent upwards and terminating in a point, is fixed to the inside of the cup to serve as a gauge. The distance of the point from the bottom of the cup is $1\frac{1}{2}$ ". The cup is provided with a close-fitting overlapping cover made of brass (22 B. W. G.) which carries the thermometer and test-lamp. The latter is suspended from two supports from the side by means of trunnions, upon which it may be made to oscillate: it is provided with a spout the mouth of which is $\frac{1}{16}$ " in diameter. The socket which is to hold the thermometer is fixed at such an angle, and its length is so adjusted that the bulb of the thermometer, when inserted to its full depth, shall be $1\frac{1}{2}$ " below the centre of the lid.

The cover is provided with three square holes, one in the centre $\frac{5}{16}$ " by $\frac{4}{16}$ ", and two smaller ones, $\frac{3}{16}$ " by $\frac{2}{16}$ ", close to the sides and opposite each other. These three holes may be closed and uncovered by means of a slide moving in grooves, and having perforations corresponding to those on the lid.

In moving the slide so as to uncover the holes, the oscillating lamp is caught by a pin fixed in the slide, and tilted in such a way as to bring the end of the spout just below the surface of the lid. Upon the slide being pushed back so as to cover the holes, the lamp returns to its original position.

Upon the cover, in front of, and in line with, the mouth of the lamp, is fixed a white bead the dimensions of which represent the size of the test flame to be used.

The bath or heated vessel consists of two flat-bottomed copper cylinders (24 B. W. G.), an inner one of 3" diameter and $2\frac{1}{2}$ " height, and an outer one of $5\frac{1}{2}$ " diameter and $5\frac{3}{4}$ " height; they are soldered to a circular copper plate (20 B. W. G.) perforated in the centre, which forms the top of the

bath, in such a manner as to enclose the space between the two cylinders, but leaving access to the inner cylinder. The top of the bath projects both outwards and inwards about $\frac{3}{8}$ ", that is, its diameter is about $\frac{9}{8}$ " greater than that of the body of the bath, while the diameter of the circular opening in the centre is about the same amount less than that of the inner copper cylinder. To the inner projection of the top is fastened, by six small screws, a flat ring of ebonite, the screws being sunk below the surface of the ebonite to avoid metallic contact between the bath and the oil-cup. The exact distance between the sides and bottom of the bath of the oil-lamp is $1\frac{1}{2}$ ". A split socket similar to that on the cover of the oil-cup, but set at a right angle, allows a thermometer to be inserted into the space between the two cylinders. The bath is further provided with a funnel, an overflow pipe, and two loop handles.

The bath rests upon a cast-iron tripod stand, to the ring of which is attached a copper cylinder or jacket (24 B. W. G.), flanged at the top, and of such dimensions that the bath, while firmly resting on the iron ring, just touches with its projecting top the inward-turned flange. The diameter of this outer jacket is $6\frac{1}{2}$ ". One of the three legs of the stand serves as support for the spirit-lamp, attached to it by means of a small swing bracket. The distance of the wick-holder from the bottom of the bath is 1".

Two thermometers are provided with the apparatus, the one for ascertaining the temperature of the bath, the other for determining the flashing-point. The thermometer for ascertaining the temperature of the water has a long bulb and a space at the top. Its range is from about 90° to 190° Fahrenheit. The scale (in degrees of Fahrenheit) is marked on an ivory back fastened to the tube in the usual way; it is fitted with a metal collar fitting the socket, and the part of the tube below the scale should have a length of about $3\frac{1}{2}$ " measured from the lower end of the scale to the end of the bulb. The thermometer for ascertaining the temperature of the oil is fitted with collar and ivory scale in a similar manner to the one described. It has a round bulb, a space at the top, and ranges from about 55° F. to 150° F.; it measures from end of ivory back to bulb $2\frac{1}{2}$ ".

NOTE.—A model apparatus is deposited at the office of the Chemical Examiner to Government at Calcutta.

Directions for applying the Test.

1. The test-apparatus is to be placed for use in a position where it is not exposed to currents of air or draughts.

2. The heating vessel or water-bath is filled by pouring water into the funnel until it begins to flow out at the spout of the vessel. The temperature of the water at the commencement of the test is to be 130° Fahrenheit, and this is attained in the first instance either by mixing hot and cold water in the bath, or in a vessel from which the bath is filled, until the thermometer which is provided for testing the temperature of the water gives the proper indication; or by heating the water with the spirit-lamp (which is attached to the stand of the apparatus) until the required temperature is indicated.

If the water has been heated too highly, it is easily reduced to 130° by pouring in cold water little by little (to replace a portion of the warm water) until the thermometer gives the proper reading.

When a test has been completed, this water-bath is again raised to 130° by placing the lamp underneath, and the result is readily obtained while the petroleum cup is being emptied, cooled, and refilled with a fresh sample to be tested. The lamp is then turned on its swivel from under the apparatus, and the next test is proceeded with.

3. The test-lamp is prepared for use by fitting it with a piece of flat plaited candlewick, and filling it with colza or rape-oil up to the lower edge of the opening of the spout or wick-tube. The lamp is trimmed so that when lighted it gives a flame of about 0.15 of an inch diameter, and this size of flame, which is represented by the projecting white bead on the cover of the oil-cup, is readily maintained by simple manipulation from time to time with a small wire trimmer.

When gas is available it may be conveniently used in place of the little oil-lamp, and for this purpose a test-flame arrangement for use with gas may be substituted for the lamp.

4. The bath having been raised to the proper temperature, the oil to be tested is introduced into the petroleum cup, being poured in slowly until the level of the liquid just reaches the point of the gauge which is fixed in the cup. In warm weather the temperature of the room in which the samples to be tested have been kept should be observed in the first instance, and, if it exceeds 65°, the samples to be tested should be cooled down (to about 60°) by immersing the bottle containing them in cold water, or by any other convenient method. The lid of the cup, with the slide closed, is then put on, and the cup is put into the bath or heating vessel. The thermometer in the lid of the cup has been adjusted so as to have its bulb just immersed in the liquid, and its position is not under any circumstances to be altered. When the cup has been placed in the proper position, the scale of the thermometer faces the operator.

5. The test-lamp is then placed in position upon the lid of the cup, the lead line or pendulum,* which has been fixed in a convenient position in front of the operator, is set in motion, and the rise of the thermometer in the petroleum cup is watched. When the temperature has reached about 66°, the operation of testing is to be commenced, the test-flame being applied once for every rise of one degree in the following manner:—

The slide is slowly drawn open while the pendulum performs three oscillations, and is closed during the fourth oscillation.

NOTE.—If it is desired to employ the test-apparatus to determine the flashing-points of oils of very low volatility, the mode of proceeding is to be modified as follows:—

The air-chamber which surrounds the cup is filled with cold water to a depth of $1\frac{1}{2}$ inches, and the heating vessel or water-bath is filled as usual, but also with cold water. The lamp is then placed under the apparatus and kept there during the entire operation. If a very heavy oil is being dealt with, the operation may be commenced with water previously heated to 120°, instead of with cold water.

* This pendulum is two (2) feet in length from the point of suspension to the centre of gravity of the weight.

D. FITZPATRICK,
Secy. to the Govt. of India.



The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, FEBRUARY 26, 1881.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 5th February, 1881, and is hereby promulgated for general information:—

ACT No. VIII OF 1881.

THE PETROLEUM ACT, 1881.

CONTENTS.

PREAMBLE.

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SECTIONS.

1. Short title.
Commencement.
Local extent.
2. Repeal of enactments.
3. Interpretation-clause.

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4. Dangerous petroleum in quantities exceeding 40 gallons.
Application for license to import, transport or possess such petroleum.
Power to grant license.
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Petroleum generally.

7. Power to make rules as to the importation of petroleum.
8. Possession and transport of petroleum.
9. Power to make rules as to such possession and transport.
10. Power to inspect and require dealer to sell samples.
11. Notice to be given when officer proposes to test samples.
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Penalties.

13. Penalty for illegal importation, &c., of petroleum.

SECTIONS.

14. Penalty for keeping, transporting, selling or exposing for sale petroleum in contravention of section 6.
15. Penalty for refusing to comply with section 10.
16. Confiscation of petroleum.
17. Jurisdiction.

Miscellaneous.

18. Rules when to have force of law.
19. Power to apply this Act to other fluids.

THE SCHEDULE.

An Act to regulate the importation, possession and transport of Petroleum and other fluids of a like nature.

WHEREAS it is expedient to regulate the importation, possession and transport of petroleum and other fluids of a like nature; It is hereby enacted as follows:—

Preliminary.

Short title.

1. This Act may be called "The Petroleum Act, 1881"; and it shall come into force on the first day of July, 1881.

Commencement.

The provisions of this Act relating to dangerous petroleum, and the importation of petroleum, extend to the whole of British India. The rest of this Act extends only to such local areas as the Local Government may, from time to time, by notification in the official Gazette, direct.

Local extent.

2. The Indian Ports Act, 1875, section thirty-seven, and Bengal Act No. III of 1865 (to make better provision for the prevention of injury from fire in Ports, and to provide for the safe keeping of Inflammable Oils in Ports and places within the Provinces under the control of the Lieutenant-Governor of Bengal) are hereby repealed.

3. In this Act, unless there is something repugnant in the subject or context,—

"petroleum" includes also the liquids commonly known by the names of rock oil, Rangoon oil, Burma oil, kerosine, paraffine oil, mineral oil, petroline, gasoline, benzol, benzoline, benzine and any inflammable liquid that is made from petroleum, coal, schist, shale, peat or any other bituminous substance, or from any products of petroleum,

but it does not include any oil ordinarily used for lubricating purposes, and having its flashing point at or above two hundred and fifty degrees of Fahrenheit's thermometer.

Explanation.—The flashing point of petroleum means the lowest temperature at which the petroleum yields a vapour which will furnish a momentary flash or flame when tested with the apparatus and in the manner described in the Schedule here-to annexed:

"dangerous petroleum" means petroleum having its flashing point below seventy-three degrees of Fahrenheit's thermometer:

"import:" "import" means to bring into British India by sea or land:

and "importation" means the bringing into British India as aforesaid:

"transport" means to remove from one place to another within British India.

Dangerous Petroleum.

4. No quantity of dangerous petroleum exceeding forty gallons shall be imported or transported, or kept by any one person or on the same premises, except under, and in accordance with the conditions of, a license from the Local Government granted as next hereinafter provided.

Application for license Every application for such to import, transport or a license shall be in writing, and shall declare—

(a) the quantity of such petroleum which it is desired to import, transport or possess, as the case may be;

(b) the purpose for which the applicant believes that such petroleum will be used; and

(c) that petroleum other than dangerous petroleum cannot be used for such purpose.

If the Local Government sees reason to believe that such petroleum will be used for such purpose, and that no petroleum other than dangerous petroleum can be used for such purpose, it may grant such license for the importation, transport or possession (as the case may be) of such petroleum, absolutely or subject to such conditions as it thinks fit.

5. No quantity of dangerous petroleum equal to or less than forty gallons shall be kept or transported without a license:

Provided that nothing in this section shall apply in any case when the quantity of such petroleum kept by any one person or on the same premises, or transported, does not exceed three gallons, and such petroleum is placed in separate glass, earthenware or metal vessels, each of which contains not more than a pint and is securely stopped.

Vessels containing dangerous petroleum to be marked. 6. All dangerous petroleum—

(a) which is kept at any place after seven days from the date on which it is imported, or

(b) which is transported, or

(c) which is sold or exposed for sale,

shall be contained in vessels which shall bear an indelible mark or a label in conspicuous characters, stating the nature of the contents thereof.

Petroleum generally.

7. The Local Government may, from time to time, make rules consistent with this Act to regulate the importation of petroleum, and in particular—

Power to make rules as to the importation of petroleum.

(a) for ascertaining the quantity and description of any petroleum on board a ship;

(b) to provide for the delivery, by the master of a ship or the consignees of the cargo, of samples of petroleum before such petroleum is landed from such ship, and for the testing thereof;

(c) to determine the ports at which only petroleum may be imported; and

(d) to regulate the time and mode of, and the precautions to be taken on, landing or transhipping any petroleum.

In this section—

"ship" includes anything made for the conveyance by water of human beings or property:

"master" includes every person (except a Pilot or Harbour Master) having for the time being the charge or control of a ship.

8. No quantity of petroleum exceeding five hundred gallons shall be kept by any one person or on the same premises or shall be transported except under, and in accordance with the conditions of, a license granted under this Act.

9. The Local Government may, from time to time, make rules consistent with this Act as to the granting of licenses to possess or transport petroleum in cases where such licenses are by law required.

Such rules may provide for the following among other matters, that is to say—

in the case of licenses to possess petroleum—

(a) the nature and situation of the premises for which they may be granted, and

(b) the inspection of such premises and the testing of petroleum found thereon;

in the case of licenses to transport petroleum—

(c) the manner in which the petroleum shall be packed, the mode of transit, and the route by which it is to be taken, and

(d) the stoppage and inspection of it during transit;

in the case of both such licenses—

(e) the authority by which the license may be granted;

(f) the fee to be charged for it;

(g) the quantity of petroleum it is to cover;

(h) the conditions which may be inserted in it;

(j) the time during which it is to continue in force; and

(k) the renewal of the license.

10. Any officer specially authorized by name or by virtue of his office in this behalf by the Local Government may require any dealer in petroleum to show him any place, and any of the vessels, in which any petroleum in his possession is stored or contained, to give him such assistance as he may require for examining the same, and to deliver to him samples of such petroleum on payment of the value of such samples.

11. When any such officer has, in exercise of the powers conferred by section ten, or by purchase, obtained a sample of petroleum in the possession of a

Notice to be given when officer proposes to test samples.

dealer, he may give a notice in writing to such dealer informing him that he is about to test such sample or cause the same to be tested with the apparatus and in the manner described in the schedule hereto annexed, at a time and place to be fixed in such notice, and that such person or his agent may be present at such testing.

12. On any such testing, if it appears to the officer or other person so testing that the petroleum from which such sample has been taken is or is not dangerous petroleum, such officer or other person may certify such fact, and the certificate so given shall be receivable as evidence in any proceedings which may be taken under this Act against the dealer in whose possession such petroleum was found, and shall, until the contrary is proved, be evidence of the fact stated therein; and a certified copy of such certificate shall be given gratis to the dealer at his request.

Penalties.

13. Any person who, in contravention of this Act or of any rules made hereunder, imports, possesses or transports any petroleum, and any person who otherwise contravenes any such rules or any condition contained in a license granted hereunder, shall be punished with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

14. Any person keeping, transporting, selling or exposing for sale petroleum in vessels not marked or labelled as prescribed by section six shall be punished with fine which may extend to fifty rupees.

15. Any dealer in petroleum who refuses or neglects to show to any officer authorized under section ten any place, or any of the vessels, in which petroleum in his possession is stored or contained, or to give him such assistance as he may require for examining the same, or to give him samples of such petroleum on payment of the value of such samples, shall be punished with fine which may extend to two hundred rupees.

16. In any case in which an offence under section thirteen or section fourteen has been committed, the convicting Magistrate may direct that—

(a) the petroleum in respect of which the offence has been committed; or

(b) where the offender is importing or transporting or is in possession of any petroleum exceeding the quantity (if any) which he is permitted to import, transport or possess, as the case may be, the whole of the petroleum which he is importing, or transporting, or is in possession of, shall, together with the tins or other vessels in which it is contained, be confiscated.

17. The criminal jurisdiction under this Act shall, in the towns of Calcutta, Madras and Bombay, be exercised by a Presidency Magistrate, and elsewhere by a Magistrate of the first class or (where specially empowered by the Local Government to

try cases under this Act) a Magistrate of the second class.

Miscellaneous.

18. All rules made by the Local Government under this Act shall be published in the official Gazette, and shall, on the expiry of one month from the date of such publication, have the force of law:

Provided that no such rule shall be so published without the previous sanction of the Governor General in Council.

19. The Governor General in Council may, from time to time, by notification in the *Gazette of India*, apply the whole or any portion of this Act to any inflammable fluid other than petroleum, and may by such notification fix, in substitution for the quantities of petroleum fixed by sections four, five and eight, the quantities of such fluid to which these sections shall apply.

The Governor General in Council may by a like notification cancel any notification issued under this section.

THE SCHEDULE.

Specification explanatory of the Test Apparatus.

The following is a description of the details of the apparatus:—

The oil-cup consists of a cylindrical vessel 2" diameter, $2\frac{2}{10}$ " height (internal), with outward projecting rim $\frac{5}{10}$ " wide, $\frac{3}{8}$ " from the top and $1\frac{1}{8}$ " from the bottom of the cup. It is made of gun-metal or brass (17 B. W. G.), tinned inside. A bracket, consisting of a short stout piece of wire, bent upwards and terminating in a point, is fixed to the inside of the cup to serve as a gauge. The distance of the point from the bottom of the cup is $1\frac{1}{2}$ ". The cup is provided with a close-fitting overlapping cover made of brass (22 B. W. G.) which carries the thermometer and test-lamp. The latter is suspended from two supports from the side by means of trunnions, upon which it may be made to oscillate: it is provided with a spout the mouth of which is $\frac{1}{8}$ " in diameter. The socket which is to hold the thermometer is fixed at such an angle, and its length is so adjusted that the bulb of the thermometer, when inserted to its full depth, shall be $1\frac{1}{2}$ " below the centre of the lid.

The cover is provided with three square holes, one in the centre $\frac{5}{10}$ " by $\frac{4}{10}$ ", and two smaller ones, $\frac{3}{10}$ " by $\frac{2}{10}$ ", close to the sides and opposite each other. These three holes may be closed and uncovered by means of a slide moving in grooves, and having perforations corresponding to those on the lid.

In moving the slide so as to uncover the holes, the oscillating lamp is caught by a pin fixed in the slide, and tilted in such a way as to bring the end of the spout just below the surface of the lid. Upon the slide being pushed back so as to cover the holes, the lamp returns to its original position.

Upon the cover, in front of, and in line with, the mouth of the lamp, is fixed a white bead the dimensions of which represent the size of the test flame to be used.

The bath or heated vessel consists of two flat-bottomed copper cylinders (24 B. W. G.), an inner one of 3" diameter and $2\frac{1}{2}$ " height, and an outer one of $5\frac{1}{2}$ " diameter and $5\frac{3}{4}$ " height; they are soldered to a circular copper plate (20 B. W. G.) perforated in the centre, which forms the top of the

bath, in such a manner as to enclose the space between the two cylinders, but leaving access to the inner cylinder. The top of the bath projects both outwards and inwards about $\frac{3}{8}$ ", that is, its diameter is about $\frac{3}{8}$ " greater than that of the body of the bath, while the diameter of the circular opening in the centre is about the same amount less than that of the inner copper cylinder. To the inner projection of the top is fastened, by six small screws, a flat ring of ebonite, the screws being sunk below the surface of the ebonite to avoid metallic contact between the bath and the oil-cup. The exact distance between the sides and bottom of the bath of the oil-lamp is $1\frac{1}{2}$ ". A split socket similar to that on the cover of the oil-cup, but set at a right angle, allows a thermometer to be inserted into the space between the two cylinders. The bath is further provided with a funnel, an overflow pipe, and two loop handles.

The bath rests upon a cast-iron tripod stand, to the ring of which is attached a copper cylinder or jacket (24 B. W. G.), flanged at the top, and of such dimensions that the bath, while firmly resting on the iron ring, just touches with its projecting top the inward-turned flange. The diameter of this outer jacket is $6\frac{1}{2}$ ". One of the three legs of the stand serves as support for the spirit-lamp, attached to it by means of a small swing bracket. The distance of the wick-holder from the bottom of the bath is 1".

Two thermometers are provided with the apparatus, the one for ascertaining the temperature of the bath, the other for determining the flashing-point. The thermometer for ascertaining the temperature of the water has a long bulb and a space at the top. Its range is from about 90° to 190° Fahrenheit. The scale (in degrees of Fahrenheit) is marked on an ivory back fastened to the tube in the usual way; it is fitted with a metal collar fitting the socket, and the part of the tube below the scale should have a length of about $3\frac{1}{2}$ " measured from the lower end of the scale to the end of the bulb. The thermometer for ascertaining the temperature of the oil is fitted with collar and ivory scale in a similar manner to the one described. It has a round bulb, a space at the top, and ranges from about 55° F. to 150° F.; it measures from end of ivory back to bulb $2\frac{1}{4}$ ".

NOTE.—A model apparatus is deposited at the office of the Chemical Examiner to Government at Calcutta.

Directions for applying the Test.

1. The test-apparatus is to be placed for use in a position where it is not exposed to currents of air or draughts.

2. The heating vessel or water-bath is filled by pouring water into the funnel until it begins to flow out at the spout of the vessel. The temperature of the water at the commencement of the test is to be 130° Fahrenheit, and this is attained in the first instance either by mixing hot and cold water in the bath, or in a vessel from which the bath is filled, until the thermometer which is provided for testing the temperature of the water gives the proper indication; or by heating the water with the spirit-lamp (which is attached to the stand of the apparatus) until the required temperature is indicated.

If the water has been heated too highly, it is easily reduced to 130° by pouring in cold water little by little (to replace a portion of the warm water) until the thermometer gives the proper reading.

When a test has been completed, this water-bath is again raised to 130° by placing the lamp underneath, and the result is readily obtained while the petroleum cup is being emptied, cooled, and refilled with a fresh sample to be tested. The lamp is then turned on its swivel from under the apparatus, and the next test is proceeded with.

3. The test-lamp is prepared for use by fitting it with a piece of flat plaited candlewick, and filling it with colza or rape-oil up to the lower edge of the opening of the spout or wick-tube. The lamp is trimmed so that when lighted it gives a flame of about 0.15 of an inch diameter, and this size of flame, which is represented by the projecting white bead on the cover of the oil-cup, is readily maintained by simple manipulation from time to time with a small wire trimmer.

When gas is available it may be conveniently used in place of the little oil-lamp, and for this purpose a test-flame arrangement for use with gas may be substituted for the lamp.

4. The bath having been raised to the proper temperature, the oil to be tested is introduced into the petroleum cup, being poured in slowly until the level of the liquid just reaches the point of the gauge which is fixed in the cup. In warm weather the temperature of the room in which the samples to be tested have been kept should be observed in the first instance, and, if it exceeds 65°, the samples to be tested should be cooled down (to about 60°) by immersing the bottle containing them in cold water, or by any other convenient method. The lid of the cup, with the slide closed, is then put on, and the cup is put into the bath or heating vessel. The thermometer in the lid of the cup has been adjusted so as to have its bulb just immersed in the liquid, and its position is not under any circumstances to be altered. When the cup has been placed in the proper position, the scale of the thermometer faces the operator.

5. The test-lamp is then placed in position upon the lid of the cup, the lead line or pendulum,* which has been fixed in a convenient position in front of the operator, is set in motion, and the rise of the thermometer in the petroleum cup is watched. When the temperature has reached about 66°, the operation of testing is to be commenced, the test-flame being applied once for every rise of one degree in the following manner:—

The slide is slowly drawn open while the pendulum performs three oscillations, and is closed during the fourth oscillation.

NOTE.—If it is desired to employ the test-apparatus to determine the flashing-points of oils of very low volatility, the mode of proceeding is to be modified as follows:—

The air-chamber which surrounds the cup is filled with cold water to a depth of $1\frac{1}{2}$ inches, and the heating vessel or water-bath is filled as usual, but also with cold water. The lamp is then placed under the apparatus and kept there during the entire operation. If a very heavy oil is being dealt with, the operation may be commenced with water previously heated to 120°, instead of with cold water.

* This pendulum is two (2) feet in length from the point of suspension to the centre of gravity of the weight.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 25th February, 1881, and is hereby promulgated for general information :—

ACT No. IX OF 1881.

An Act to amend the Administrator General's Act, 1874.

WHEREAS Hindús, Muhammadans and Buddhists are exempted from the operation of certain provisions of the Administrator General's Act, 1874, but are subject to the operation of certain other provisions of the said Act, and it is expedient that Pársís should be exempted from, and be subject to, the operation of the said Act to the same extent as Hindús, Muhammadans and Buddhists; and whereas it is expedient to amend the said Act in other particulars hereinafter appearing; It is hereby enacted as follows :—

Short title. 1. This Act may be called
"The Administrator General's Act, 1881":

Commencement. and shall come into force at once.

2. In sections 16, 17, 18 and 64, respectively, of the said Act, between the word "Muhammadan" and the words "or Buddhist," wherever they occur, the word "Pársí" shall be inserted.

3. After section twenty-three of the same Act, the following section shall be inserted :—

"23A. Probate or letters of administration granted by the High Court at Calcutta, Madras or Bombay to the Administrator General of the Presidency of Bengal, Madras or Bombay, as the case may be, shall have effect over all the property and estate, moveable or immoveable, of the deceased throughout such Presidency, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts and all per-

sons delivering up such property to such Administrator General: Provided that the High Court may direct, by its grant, that such probate or letters of administration shall have like effect throughout either or both of the other Presidencies.

"Whenever a grant of probate or letters of administration is made by a High Court to the Administrator General, with such effect as last aforesaid, the Registrar of such Court shall send to each of the other two High Courts a certificate that such grant has been made, and such certificate shall be filed by the Court receiving the same."

New section substituted for section 28 of same.

4. For section twenty-eight of the same Act, the following section shall be substituted :—

"28. When the Administrator General has given such notices as would have been given by the High Court in an administration-suit, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets or any part thereof in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he had not notice at the time of such distribution; and no notice of any claim shall affect him unless proceedings to enforce such claim are commenced within one month after the giving of such notice and prosecuted without unreasonable delay.

"Nothing herein contained shall prejudice the right of any creditor or other claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively."

5. In section thirty-six of the same Act, the words "not being a Hindú, Muhammadan or Buddhist, or exempted under the Indian Succession Act, 1865, section three hundred and thirty-two, from the operation of that Act" shall be repealed; and in section thirty-seven of the same Act, after the words "effects of the deceased," the following shall be inserted, namely :—"and such deceased was not a Hindú, Muhammadan, Pársí or Buddhist, or exempted under the Indian Succession Act, 1865, section three hundred and thirty-two, from the operation of that Act."

6. In section thirty-eight of the same Act, for the words "such certificate" the words "certificate under section thirty-six or thirty-

seven" shall be substituted ; and the words " which oath or affirmation the Administrator General is hereby authorized to administer or take" shall be repealed.

New section inserted after section 55 of same.

7. After section fifty-five of the same Act, the following section shall be inserted :—

" 55A. Notwithstanding anything hereinbefore contained, an Administrator General of a Presidency obtaining probate or letters of administration operating in another Presidency shall be entitled to the same rate of commission in respect of the collection and distribution of assets collected in such Presidency as the Administrator General of such Presidency would have been entitled to if such assets had been collected and distributed by him, and to no higher rate."

New section inserted before section 61 of same.

8. Before section sixty-one of the same Act, the following section shall be inserted :—

" 60A. The Administrator General may, whenever he desires, for the purposes of this Act, to satisfy himself regarding any question of fact, examine upon oath or affirmation (which he is hereby authorized to administer or take) any person who is willing to be so examined by him regarding such question."

9. Nothing herein contained shall affect any probate, letters of administration or certificate granted or vested under the said Act before the passing of this Act.

Saving of letters and certificates already granted.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 25th February, 1881, and is hereby promulgated for general information :—

ACT NO. X OF 1881.

An Act to amend the Coroners' Act, 1871, and for other purposes.

WHEREAS under the Coroners' Act, 1871, the local limits of the jurisdiction of the Coroner of Madras are made co-extensive with the local limits of the ordinary original civil jurisdiction of the High Court ;

and whereas it is expedient to empower the Local Government to alter the local limits of the said Coroner's jurisdiction ;

and whereas it is also expedient to amend the said Act in other particulars hereinafter appearing ;

and whereas it is also expedient to correct an error in section nine of Madras Act No. VIII of 1867 (*an Act to incorporate the Police of the Town of Madras with the general Police of the Madras Presidency, and for other purposes*) as amended by the Code of Criminal Procedure ; It is hereby enacted as follows :—

1. This Act may be called "The Coroners' Act, 1881," and shall come into force on the passing thereof.

2. The second clause of the first section of the Coroners' Act, 1871, is hereby repealed.

3. The Governor of Fort St. George in Council may, from time to time, with the previous sanction of the Governor General in Council, by notification in the *Fort St. George Gazette*, alter the local limits of the jurisdiction of the Coroner of Madras :

Provided that such limits shall not extend beyond the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Madras.

4. When, in exercise of the power conferred by section three, any area within the local limits of the said ordinary original civil jurisdiction is excluded from the local limits of the Coroner's jurisdiction, sections one hundred and thirty-three to one hundred and thirty-five (both inclusive) of the Code of Criminal Procedure shall extend to such area while so excluded, and all functions assigned to a Magistrate by those sections shall be discharged by the Commissioner of Police.

5. In section eight of the Coroners' Act, 1871, for the words "is informed," the words "has reason to believe" shall be substituted.

6. For the first two clauses of section seventeen of the Coroners' Act, 1871, the following shall be substituted, that is to say :—

"It shall be the duty of all persons acquainted with the circumstances attending the death to appear before the inquest as witnesses: the Coroner shall enquire of such circumstances and the cause of death, and, if before or during the enquiry he is informed that any person, whether within or without the local limits of his jurisdiction, can give evidence or produce any document material thereto, may issue a summons requiring him to attend and give evidence or produce such document on the inquest.

"Any person disobeying such summons shall be deemed to have committed an offence under section one hundred and seventy-four, section one hundred and seventy-five or section one hundred and seventy-six of the Indian Penal Code, as the case may be."

7. To section twenty of the Coroners' Act, 1871, the following clause shall be added, that is to say :—

"For the purposes of section twenty-six of the Indian Evidence Act, 1872, a Coroner shall be deemed to be a Magistrate."

8. For section nine of the said Madras Act No. VIII of 1867, the following section shall be substituted :—

9. The Town Police shall be governed by all the provisions of the Criminal Procedure Code contained in sections 89, 91 to 103 (both inclusive), 108, 109, 110, 111, 112, 114, 116, 117

(first part), 118, 119, 120, 123, 124, 125, 127, 128, 129, 131, 136, 139, 140, 141, 142, 144, 147, chapter XII, sections 159, 161, 163 to 170 (both inclusive), 174 to 185 (both inclusive), chapter XXVII (except section 385), sections 415 to 420 (both inclusive) and 480, so far as they are applicable :

“ Provided always, that the officer in charge of a Police-station shall not be required to bind over the prosecutor and witnesses as directed in section 123 of the said Code, if their immediate attendance can be procured without recognizances.”

9. The portion of schedule V of the Code of Criminal Procedure, under the heading “ Acts of the Governor of Madras in Council,” shall be read as if the letter and figure “ s. 9” in the first column, and all the words and figures in the second and third columns, opposite the said letter and figure, were omitted.

Act X of 1872, schedule V, in part repealed.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 25th February, 1881, and is hereby promulgated for general information :—

ACT No. XI OF 1881.

An Act to give power to prohibit the levy of municipal taxes in certain cases.

WHEREAS it is expedient to empower the Governor General in Council to prohibit, in certain cases, the levy of municipal taxes payable by persons in the military service or by the Secretary of State for India in Council; It is hereby enacted as follows :—

Short title.	1. This Act may be called "The Municipal Taxation Act, 1881."
Local extent.	It extends to the whole of British India :
Commencement.	and shall come into force at once.

2. In this Act "Municipal Committee" includes a Municipal Corporation or a body of Municipal Commissioners constituted by or under the provisions of any enactment for the time being in force.

3. Notwithstanding anything contained in any enactment for the time being in force, the Governor General in Council may, by an order in writing, prohibit the levy by a Municipal Committee of any specified tax—

(a) payable by any person subject to the Army Discipline and Regulation Act, 1879, or the Indian Articles of War, who is compelled by the exigencies of military duty to reside within the limits of a municipality; or

(b) payable by the Secretary of State for India in Council.

The Governor General in Council may, by a like order, rescind any such prohibition.

4. So long as any order made under section three, prohibiting the levy of a tax on any person mentioned in clause (a) of that section, remains in force, the Secretary of State for India in Council shall be liable to pay to the Municipal Committee mentioned in the order the amount which otherwise would have been payable to such Committee by such person :

Provided that the said Secretary of State in Council shall not be liable to pay any sum in respect of any horse which such person is bound by the regulations of the service to which he belongs, to keep.

5. So long as any order made under section three, prohibiting the levy of any tax payable by the Secretary of State for India in Council, remains in force, the said Secretary of State in Council shall be liable to pay to the Municipal Committee, in lieu of such tax, such sums (if any) as an officer from time to time appointed in this behalf by the Local Government may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable.

6. If any question arises whether any duty is military duty within the meaning of this Act, the decision of the Governor General in Council thereon shall be conclusive.

If any question arises whether any person is compelled as aforesaid to reside within the limits of a municipality, or is bound as aforesaid to keep any horse, the decision thereon of such authority as the Governor General in Council may, from time to time, appoint in this behalf shall be conclusive.

D. FITZPATRICK,
Secy. to the Govt. of India.



The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 5, 1881.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 25th February, 1881, and is hereby promulgated for general information :—

ACT No. IX OF 1881.

An Act to amend the Administrator General's Act, 1874.

WHEREAS Hindús, Muhammadans and Buddhists are exempted from the operation of certain provisions of the Administrator General's Act, 1874, but are subject to the operation of certain other provisions of the said Act, and it is expedient that Pársís should be exempted from, and be subject to, the operation of the said Act to the same extent as Hindús, Muhammadans and Buddhists; and whereas it is expedient to amend the said Act in other particulars hereinafter appearing; It is hereby enacted as follows :—

Short title. 1. This Act may be called
"The Administrator General's Act, 1881":

Commencement. and shall come into force at once.

2. In sections 16, 17, 18 and 64, respectively, of the said Act, between the word "Muhammadan" and the words "or Buddhist," wherever they occur, the word "Pársí" shall be inserted.

3. After section twenty-three of the same Act, the following section shall be inserted :—

"23A. Probate or letters of administration granted by the High Court at Calcutta, Madras or Bombay to the Administrator General of the Presidency of Bengal, Madras or Bombay, as the case may be, shall have effect over all the property and estate, moveable or immoveable, of the deceased throughout such Presidency, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts and all per-

sons delivering up such property to such Administrator General: Provided that the High Court may direct, by its grant, that such probate or letters of administration shall have like effect throughout either or both of the other Presidencies.

"Whenever a grant of probate or letters of administration is made by a High Court to the Administrator General, with such effect as last aforesaid, the Registrar of such Court shall send to each of the other two High Courts a certificate that such grant has been made, and such certificate shall be filed by the Court receiving the same."

New section substituted for section 28 of same. 4. For section twenty-eight of the same Act, the following section shall be substituted :—

"28. When the Administrator General has given such notices as would have been given by the High Court in an administration-suit, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets or any part thereof in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he had not notice at the time of such distribution; and no notice of any claim shall affect him unless proceedings to enforce such claim are commenced within one month after the giving of such notice and prosecuted without unreasonable delay.

"Nothing herein contained shall prejudice the right of any creditor or other claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively."

5. In section thirty-six of the same Act, the words "not being a Hindú, Muhammadan or Buddhist, or exempted under the Indian Succession Act, 1865, section three hundred and thirty-two, from the operation of that Act" shall be repealed; and in section thirty-seven of the same Act, after the words "effects of the deceased," the following shall be inserted, namely :—"and such deceased was not a Hindú, Muhammadan, Pársí or Buddhist, or exempted under the Indian Succession Act, 1865, section three hundred and thirty-two, from the operation of that Act."

6. In section thirty-eight of the same Act, for the words "such certificate" the words "certificate under section thirty-six or thirty-

seven" shall be substituted ; and the words " which oath or affirmation the Administrator General is hereby authorized to administer or take" shall be repealed.

New section inserted after section 55 of same.

7. After section fifty-five of the same Act, the following section shall be inserted :—

" 55A. Notwithstanding anything hereinbefore contained, an Administrator General of a Presidency obtaining probate or letters of administration operating in another Presidency shall be entitled to the same rate of commission in respect of the collection and distribution of assets collected in such Presidency as the Administrator General of such Presidency would have been entitled to if such assets had been collected and distributed by him, and to no higher rate."

New section inserted before section 61 of same.

8. Before section sixty-one of the same Act, the following section shall be inserted :—

" 60A. The Administrator General may, whenever he desires, for the purposes of this Act, to satisfy himself regarding any question of fact, examine upon oath or affirmation (which he is hereby authorized to administer or take) any person who is willing to be so examined by him regarding such question."

9. Nothing herein contained shall affect any probate, letters of administration or certificate granted or vested under the said Act before the passing of this Act.

Saving of letters and certificates already granted.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 25th February, 1881, and is hereby promulgated for general information:—

ACT NO. X OF 1881.

An Act to amend the Coroners' Act, 1871, and for other purposes.

WHEREAS under the Coroners' Act, 1871, the local limits of the jurisdiction of the Coroner of Madras are made co-extensive with the local limits of the ordinary original civil jurisdiction of the High Court;

and whereas it is expedient to empower the Local Government to alter the local limits of the said Coroner's jurisdiction;

and whereas it is also expedient to amend the said Act in other particulars hereinafter appearing;

and whereas it is also expedient to correct an error in section nine of Madras Act No. VIII of 1867 (*an Act to incorporate the Police of the Town of Madras with the general Police of the Madras Presidency, and for other purposes*) as amended by the Code of Criminal Procedure; It is hereby enacted as follows:—

1. This Act may be called "The Coroners' Act, 1881," and shall come into force on the passing thereof.
Short title.
Commencement.
2. The second clause of the first section of the Coroners' Act, 1871, is hereby repealed.
Partial repeal of Act IV of 1871, section 1.
3. The Governor of Fort St. George in Council may, from time to time, with the previous sanction of the Governor General in Council, by notification in the *Fort St. George Gazette*, alter the local limits of the jurisdiction of the Coroner of Madras:
Power to alter local limits of jurisdiction of Coroner of Madras.

Provided that such limits shall not extend beyond the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Madras.

4. When, in exercise of the power conferred by section three, any area within the local limits of the said ordinary original civil jurisdiction is excluded from the local limits of the Coroner's jurisdiction, sections one hundred and thirty-three to one hundred and thirty-five (both inclusive) of the Code of Criminal Procedure shall extend to such area while so excluded, and all functions assigned to a Magistrate by those sections shall be discharged by the Commissioner of Police.
Sections 133 to 135 of Act X of 1872 to extend to area excluded from Coroner's jurisdiction.
5. In section eight of the Coroners' Act, 1871, for the words "is informed," the words "has reason to believe" shall be substituted.
Act IV of 1871, section 8, amended.

6. For the first two clauses of section seventeen of the Coroners' Act, 1871, the following shall be substituted, that is to say:—
Section 17 of same Act amended.

"It shall be the duty of all persons acquainted with the circumstances attending the death to appear before the inquest as witnesses: the Coroner shall enquire of such circumstances and the cause of death, and, if before or during the enquiry he is informed that any person, whether within or without the local limits of his jurisdiction, can give evidence or produce any document material thereto, may issue a summons requiring him to attend and give evidence or produce such document on the inquest."

"Any person disobeying such summons shall be deemed to have committed an offence under section one hundred and seventy-four, section one hundred and seventy-five or section one hundred and seventy-six of the Indian Penal Code, as the case may be."

7. To section twenty of the Coroners' Act, 1871, the following clause shall be added, that is to say:—
Addition to section 20 of same Act.

"For the purposes of section twenty-six of the Indian Evidence Act, 1872, a Coroner shall be deemed to be a Magistrate."

8. For section nine of the said Madras Act No. VIII of 1867, the following section shall be substituted:—
New section substituted for section 9 of Madras Act VIII of 1867.

9. The Town Police shall be governed by all the provisions of the Criminal Procedure Code contained in sections 89, 91 to 103 (both inclusive), 108, 109, 110, 111, 112, 114, 116, 117
Law to govern Town Police.

(first part), 118, 119, 120, 123, 124, 125, 127, 128, 129, 131, 136, 139, 140, 141, 142, 144, 147, chapter XII, sections 159, 161, 163 to 170 (both inclusive), 174 to 185 (both inclusive), chapter XXVII (except section 385), sections 415 to 420 (both inclusive) and 480, so far as they are applicable :

“ Provided always, that the officer in charge of a Police-station shall not be required to bind over the prosecutor and witnesses as directed in section 123 of the said Code, if their immediate attendance can be procured without recognizances.”

9. The portion of schedule V of the Code of Criminal Procedure, under the heading “ Acts of the Governor of Madras in Council,” shall be read as if the letter and figure “ s. 9” in the first column, and all the words and figures in the second and third columns, opposite the said letter and figure, were omitted.

Act X of 1872, schedule V, in part repealed.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 25th February, 1881, and is hereby promulgated for general information:—

ACT No. XI OF 1881.

An Act to give power to prohibit the levy of municipal taxes in certain cases.

WHEREAS it is expedient to empower the Governor General in Council to prohibit, in certain cases, the levy of municipal taxes payable by persons in the military service or by the Secretary of State for India in Council; It is hereby enacted as follows:—

Short title.	1. This Act may be called "The Municipal Taxation Act, 1881."
Local extent.	It extends to the whole of British India:
Commencement.	and shall come into force at once.

2. In this Act "Municipal Committee" includes a Municipal Corporation or a body of Municipal Commissioners constituted by or under the provisions of any enactment for the time being in force.

3. Notwithstanding anything contained in any enactment for the time being in force, the Governor General in Council may, by an order in writing, prohibit the levy by a Municipal Committee of any specified tax—

(a) payable by any person subject to the Army Discipline and Regulation Act, 1879, or the Indian Articles of War, who is compelled by the exigencies of military duty to reside within the limits of a municipality; or

(b) payable by the Secretary of State for India in Council.

The Governor General in Council may, by a like order, rescind any such prohibition.

4. So long as any order made under section three, prohibiting the levy of a tax on any person mentioned in clause (a) of that section, remains in force, the Secretary of State for India in Council shall be liable to pay to the Municipal Committee mentioned in the order the amount which otherwise would have been payable to such Committee by such person:

Provided that the said Secretary of State in Council shall not be liable to pay any sum in respect of any horse which such person is bound by the regulations of the service to which he belongs, to keep.

5. So long as any order made under section three, prohibiting the levy of any tax payable by the Secretary of State for India in Council, remains in force, the said Secretary of State in Council shall be liable to pay to the Municipal Committee, in lieu of such tax, such sums (if any) as an officer from time to time appointed in this behalf by the Local Government may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable.

6. If any question arises whether any duty is military duty within the meaning of this Act, the decision of the Governor General in Council thereon shall be conclusive.

If any question arises whether any person is compelled as aforesaid to reside within the limits of a municipality, or is bound as aforesaid to keep any horse, the decision thereon of such authority as the Governor General in Council may, from time to time, appoint in this behalf shall be conclusive.

D. FITZPATRICK,
Secy. to the Govt. of India.



The Gazette of India.

PUBLISHED BY AUTHORITY.

CALCUTTA, SATURDAY, MARCH 12, 1881.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 25th February, 1881, and is hereby promulgated for general information:—

ACT No. IX OF 1881.

An Act to amend the Administrator General's Act, 1874.

WHEREAS Hindús, Muhammadans and Buddhists are exempted from the operation of certain provisions of the Administrator General's Act, 1874, but are subject to the operation of certain other provisions of the said Act, and it is expedient that Pársís should be exempted from, and be subject to, the operation of the said Act to the same extent as Hindús, Muhammadans and Buddhists; and whereas it is expedient to amend the said Act in other particulars hereinafter appearing; It is hereby enacted as follows:—

Short title. 1. This Act may be called
"The Administrator General's Act, 1881":

Commencement. and shall come into force
at once.

2. In sections 16, 17, 18 and 64, respectively, of the said Act, between the word "Muhammadan" and the words "or Buddhist," wherever they occur, the word "Pársí" shall be inserted.

3. After section twenty-three of the same Act, the following section shall be inserted:—

"23A. Probate or letters of administration granted by the High Court at Calcutta, Madras or Bombay to the Administrator General of the Presidency of Bengal, Madras or Bombay, as the case may be, shall have effect over all the property and estate, moveable or immovable, of the deceased throughout such Presidency, and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him, and shall afford full indemnity to all debtors paying their debts and all per-

sons delivering up such property to such Administrator General: Provided that the High Court may direct, by its grant, that such probate or letters of administration shall have like effect throughout either or both of the other Presidencies.

"Whenever a grant of probate or letters of administration is made by a High Court to the Administrator General, with such effect as last aforesaid, the Registrar of such Court shall send to each of the other two High Courts a certificate that such grant has been made, and such certificate shall be filed by the Court receiving the same."

New section substituted for section 28 of same.

4. For section twenty-eight of the same Act, the following section shall be substituted:—

"28. When the Administrator General has given such notices as would have been given by the High Court in an administration-suit, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets or any part thereof in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he had not notice at the time of such distribution; and no notice of any claim shall affect him unless proceedings to enforce such claim are commenced within one month after the giving of such notice and prosecuted without unreasonable delay.

"Nothing herein contained shall prejudice the right of any creditor or other claimant to follow the assets or any part thereof in the hands of the persons who may have received the same respectively."

5. In section thirty-six of the same Act, the words "not being a Hindú, Muhammadan or Buddhist, or exempted under the Indian Succession Act, 1865, section three hundred and thirty-two, from the operation of that Act" shall be repealed; and in section thirty-seven of the same Act, after the words "effects of the deceased," the following shall be inserted, namely:—"and such deceased was not a Hindú, Muhammadan, Pársí or Buddhist, or exempted under the Indian Succession Act, 1865, section three hundred and thirty-two, from the operation of that Act."

6. In section thirty-eight of the same Act, for the words "such certificate" the words "certificate under section thirty-six or thirty-

seven" shall be substituted ; and the words " which oath or affirmation the Administrator General is hereby authorized to administer or take" shall be repealed.

New section inserted after section 55 of same.

7. After section fifty-five of the same Act, the following section shall be inserted :—

" 55A. Notwithstanding anything hereinbefore contained, an Administrator General of a Presidency obtaining probate or letters of administration operating in another Presidency shall be entitled to the same rate of commission in respect of the collection and distribution of assets collected in such Presidency as the Administrator General of such Presidency would have been entitled to if such assets had been collected and distributed by him, and to no higher rate."

New section inserted before section 61 of same.

8. Before section sixty-one of the same Act, the following section shall be inserted :—

" 60A. The Administrator General may, whenever he desires, for the purposes of this Act, to satisfy himself regarding any question of fact, examine upon oath or affirmation (which he is hereby authorized to administer or take) any person who is willing to be so examined by him regarding such question."

9. Nothing herein contained shall affect any probate, letters of administration or certificate granted or vested under the said Act before the passing of this Act.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 25th February, 1881, and is hereby promulgated for general information :—

ACT No. X OF 1881.

An Act to amend the Coroners' Act, 1871, and for other purposes.

WHEREAS under the Coroners' Act, 1871, the local limits of the jurisdiction of the Coroner of Madras are made co-extensive with the local limits of the ordinary original civil jurisdiction of the High Court;

and whereas it is expedient to empower the Local Government to alter the local limits of the said Coroner's jurisdiction;

and whereas it is also expedient to amend the said Act in other particulars hereinafter appearing;

and whereas it is also expedient to correct an error in section nine of Madras Act No. VIII of 1867 (*an Act to incorporate the Police of the Town of Madras with the general Police of the Madras Presidency, and for other purposes*) as amended by the Code of Criminal Procedure; It is hereby enacted as follows :—

1. This Act may be called "The Coroners' Act, 1881," and shall come into force on the passing thereof.

2. The second clause of the first section of the Coroners' Act, 1871, is hereby repealed.

3. The Governor of Fort St. George in Council may, from time to time, with the previous sanction of the Governor General in Council, by notification in the *Fort St. George Gazette*, alter the local limits of the jurisdiction of the Coroner of Madras:

Provided that such limits shall not extend beyond the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Madras.

4. When, in exercise of the power conferred by section three, any area within the local limits of the said ordinary original civil jurisdiction is excluded from the local limits of the Coroner's jurisdiction, sections one hundred and thirty-three to one hundred and thirty-five (both inclusive) of the Code of Criminal Procedure shall extend to such area while so excluded, and all functions assigned to a Magistrate by those sections shall be discharged by the Commissioner of Police.

5. In section eight of the Coroners' Act, 1871, for the words "is informed," the words "has reason to believe" shall be substituted.

6. For the first two clauses of section seventeen of the Coroners' Act, 1871, the following shall be substituted, that is to say :—

"It shall be the duty of all persons acquainted with the circumstances attending the death to appear before the inquest as witnesses: the Coroner shall enquire of such circumstances and the cause of death, and, if before or during the enquiry he is informed that any person, whether within or without the local limits of his jurisdiction, can give evidence or produce any document material thereto, may issue a summons requiring him to attend and give evidence or produce such document on the inquest.

"Any person disobeying such summons shall be deemed to have committed an offence under section one hundred and seventy-four, section one hundred and seventy-five or section one hundred and seventy-six of the Indian Penal Code, as the case may be."

7. To section twenty of the Coroners' Act, 1871, the following clause shall be added, that is to say :—

"For the purposes of section twenty-six of the Indian Evidence Act, 1872, a Coroner shall be deemed to be a Magistrate."

8. For section nine of the said Madras Act No. VIII of 1867, the following section shall be substituted :—

"9. The Town Police shall be governed by all the provisions of the Criminal Procedure Code contained in sections 89, 91 to 103 (both inclusive), 108, 109, 110, 111, 112, 114, 116, 117

(first part), 118, 119, 120, 123, 124, 125, 127, 128, 129, 131, 136, 139, 140, 141, 142, 144, 147, chapter XII, sections 159, 161, 163 to 170 (both inclusive), 174 to 185 (both inclusive), chapter XXVII (except section 385), sections 415 to 420 (both inclusive) and 480, so far as they are applicable :

“ Provided always, that the officer in charge of a Police-station shall not be required to bind over the prosecutor and witnesses as directed in section 123 of the said Code, if their immediate attendance can be procured without recognizances.”

9. The portion of schedule V of the Code of Criminal Procedure, under the heading “ Acts of the Governor of Madras in Council,” shall be read as if the letter and figure “ s. 9” in the first column, and all the words and figures in the second and third columns, opposite the said letter and figure, were omitted.

D. FITZPATRICK,

Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Third Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 25th February, 1881, and is hereby promulgated for general information :—

ACT No. XI of 1881.

An Act to give power to prohibit the levy of municipal taxes in certain cases.

WHEREAS it is expedient to empower the Governor General in Council to prohibit, in certain cases, the levy of municipal taxes payable by persons in the military service or by the Secretary of State for India in Council; It is hereby enacted as follows :—

- Short title. 1. This Act may be called "The Municipal Taxation Act, 1881."
- Local extent. It extends to the whole of British India :
- Commencement. and shall come into force at once.
2. In this Act "Municipal Committee" includes a Municipal Corporation or a body of Municipal Commissioners constituted by or under the provisions of any enactment for the time being in force.
3. Notwithstanding anything contained in any enactment for the time being in force, the Governor General in Council may, by an order in writing, prohibit the levy by a Municipal Committee of any specified tax—
- (a) payable by any person subject to the Army Discipline and Regulation Act, 1879, or the Indian Articles of War, who is compelled by the exigencies of military duty to reside within the limits of a municipality; or

(b) payable by the Secretary of State for India in Council.

The Governor General in Council may, by a like order, rescind any such prohibition.

4. So long as any order made under section three, prohibiting the levy of a tax on any person mentioned in clause (a) of that section, remains in force, the Secretary of State for India in Council shall be liable to pay to the Municipal Committee mentioned in the order the amount which otherwise would have been payable to such Committee by such person :

Provided that the said Secretary of State in Council shall not be liable to pay any sum in respect of any horse which such person is bound by the regulations of the service to which he belongs, to keep.

5. So long as any order made under section three, prohibiting the levy of any tax payable by the Secretary of State for India in Council, remains in force, the said Secretary of State in Council shall be liable to pay to the Municipal Committee, in lieu of such tax, such sums (if any) as an officer from time to time appointed in this behalf by the Local Government may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable.

6. If any question arises whether any duty is military duty within the meaning of this Act, the decision of the Governor General in Council thereon shall be conclusive.

If any question arises whether any person is compelled as aforesaid to reside within the limits of a municipality, or is bound as aforesaid to keep any horse, the decision thereon of such authority as the Governor General in Council may, from time to time, appoint in this behalf shall be conclusive.

D. FITZPATRICK,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 11th March 1881, and is hereby promulgated for general information:—

ACT No. XII OF 1881.

THE NORTH-WESTERN PROVINCES
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FIRST SCHEDULE.—FORMS.

SECOND SCHEDULE.—TERRITORIES EXEMPTED, IN THE FIRST INSTANCE, FROM THE OPERATION OF THE ACT.

A Bill to amend the Law relating to the recovery of Rent in the North-Western Provinces.

WHEREAS it is expedient to amend the law relating to the recovery of Rent in the North-Western Provinces of the Presidency of Fort William in Bengal; It is hereby enacted as follows:—

Preamble.

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called "The North-Western Provinces Rent Act, 1881."

It extends in the first instance to the territories for the time being under the government of the Lieutenant-Governor of the North-Western Provinces, except those specified in the second schedule hereto annexed. But the Local Government may, by notification in the official Gazette, extend the whole or any part of this Act to all or any of the territories so excepted, and when any part of the North-Western Provinces Rent Act, 1873, has been extended to any such territory, such part shall be repealed therein and the corresponding part of this Act shall extend thereto.

Local extent.

Save as provided by sections 171 and 172, nothing herein contained applies to land for the time being occupied by dwelling-houses or manufactories, or appurtenant thereto, so long as such land is not let to agricultural tenants.

This Act shall come into force on the first day of April, 1881.

Commencement.

2. The North-Western Provinces Rent Act, 1873, is hereby repealed. But such repeal shall not legalize any practice which, immediately before the passing of that Act, was unlawful.

All rules and appointments made, notifications and proclamations issued, Rules, &c., under repealed Act. authorities and powers conferred, leases granted, rents fixed, rights acquired, liabilities incurred and places appointed under that Act shall, so far as may be, be deemed to have been made, issued, conferred, granted, fixed, acquired, incurred and appointed hereunder.

Illustration (a) to the Indian Penal Code, section 19, and Act No. XI of 1865, section 52, shall be read as if, for "Act X of 1859," the words and figures, "the North-Western Provinces Rent Act, 1881," were substituted. And in all Acts passed after the said North-Western Provinces Rent Act, 1873, all references to that Act shall be read as if made to this Act.

3. In this Act, unless there be something repugnant in the subject or context—

'Mahál.'

(1.) 'Mahál' means—

(a) any local area held under a separate engagement for the payment of land-revenue, and for which a separate record-of-rights has been framed;

(b) any local area of which the revenue has been assigned or redeemed, and for which a separate record-of-rights has been framed:

'Tenant.'

(1A.) 'Tenant' includes a thékadár and a katkanadár:

(2.) 'Rent' means whatever is to be paid, delivered or rendered by a tenant on account of his holding, use or occupation of land:

'Rent.'

(3.) 'Landholder' means the person to whom a tenant is liable to pay rent:

'Landholder.'

'Sir-land:'

(4.) 'Sir-land' means—

(a) land recorded as sir at the last settlement or revision of settlement of the district in which it is situate, and continuously so recorded since;

(b) land continuously cultivated for twelve years by the proprietor himself with his own stock or by his servants, or by hired labour;

(c) land recognized by village-custom as the special holding of a co-sharer, or treated as such in the distribution of profits or charges among the co-sharers:

(5.) 'Collector of a District' means the chief officer in charge of the Revenue Administration of a District:
'Collector of a District:'

(6.) 'Commissioner of a Division' means the chief officer in charge of the Revenue Administration of a Division:
'Commissioner of a Division:'

(7.) 'Board' means the Board of Revenue for the North-Western Provinces:
'Board:'

(8.) 'Civil Jail' means the civil jail of the District, and includes any place appointed by the Local Government for the confinement of prisoners under sentence of any Court constituted under this Act.
'Civil Jail:'

CHAPTER II.

RIGHTS AND LIABILITIES OF LANDHOLDERS AND TENANTS.

4. When any permanent and transferable interest in land in a district or a portion of a district which has been permanently settled has been held otherwise than under a terminable lease by any person intermediate between the proprietor of the mahál and the occupants, and by the predecessors in interest of such person, from the time of the permanent-settlement, at the same rate of rent, such person shall have a right to hold such interest at that rate.
Intermediate holders of land at rates unchanged since permanent-settlement.

5. When any land in a district or portion of a district which is permanently settled has been held by a tenant and his predecessors in interest, from the time of the permanent settlement, at the same rate of rent, such tenant shall have a right of occupancy at that rate.
Tenants at fixed rates.

A tenant having such right is hereinafter called a "tenant at a fixed rate."

6. When, in any suit to which the provisions of section 4 or section 5 apply, it is proved that the land has for a period of twenty years next before the institution of the suit been held by the present holder and his predecessors in interest at the same rate of rent, it shall be presumed, until the contrary is proved, that it has been held at such rate from the time of the permanent settlement.
Presumption when 20 years' holding at fixed rate is proved.

7. Every person who may hereafter lose or part with his proprietary rights in any mahál shall have a right of occupancy in the land held by him as sir in such mahál at the date of such loss or parting, at a rent which shall be four annas in the rupee less than the prevailing rate payable by tenants-at-will for land of similar quality and with similar advantages.
Ex-proprietary tenants.

Persons having such rights of occupancy shall be called "ex-proprietary tenants," and shall have all the rights of occupancy-tenants.

If there are two or more sharers in any sir-land and one of them becomes an ex-proprietary tenant, the share which previously belonged to such ex-proprietary tenant shall, on his application or on the application of the person entitled to receive the rent, be divided off by the Collector, and the rights of the ex-proprietary tenant shall be limited to the land comprised in such share.

8. Every tenant who has actually occupied or cultivated land continuously for twelve years has a right of occupancy in the land so occupied or cultivated by him.
Occupancy-tenants.

Such tenants shall be called "occupancy-tenants."

The occupation or cultivating of the father or other person from whom the tenant inherits, shall be deemed to be the occupation or cultivating of the tenant within the meaning of this section:

Provided that no tenant shall acquire, under this section, a right of occupancy—
Tenants barred from right of occupancy.

(a) in land which he holds from an occupancy-tenant, or from an ex-proprietary tenant, or from a tenant at fixed rates;

(b) in sir-land;

(c) in land held by him in lieu of wages.

Provided also that, when a tenant actually occupies or cultivates land under a written lease, without having a right of occupancy in such land, the period of twelve years necessary for acquiring a right of occupancy therein by him or any one claiming under him shall begin on the expiration of the term of such lease. If during the currency of such lease he ceases to occupy the land comprised therein, and sublets it to another, no right of occupancy in such land shall be acquired by the sub-lessee during the currency of the lease.
Time excluded from reckoning period necessary for acquiring right of occupancy.

Rights under sections 7 and 8 when transferable.

9. The right of tenants at fixed rates may devolve by succession or be transferred.

No other right of occupancy shall be transferable in execution of a decree or otherwise than by voluntary transfer between persons in favour of whom as co-sharers such right originally arose or who have become by succession co-sharers therein.

When any person entitled to such last-mentioned right dies, the right shall devolve as if it were land: Provided that no collateral relative of the deceased who did not then share in the cultivation of his holding shall be entitled to inherit under this clause.

10. On the application of any tenant to have his class of tenure determined, the Collector of the District or Assistant Collector shall determine the class to which he belongs, namely—

whether he is a tenant at fixed rates,
or an ex-proprietary tenant,
or an occupancy-tenant,
or whether he is a tenant without a right of occupancy.

Bar to enhancement of rent of tenants at fixed rates. 11. The rent paid by tenants at fixed rates shall not be liable to enhancement, except as provided by section 18.

Enhancement in case of ex-proprietary and occupancy-tenants. 12. The rent paid by ex-proprietary or occupancy-tenants shall not be liable to enhancement except—

(a) by a written agreement registered under the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or recorded before the kánungo: or

(b) by order of a Settlement-officer passed under the law for the time being in force: or

(c) by order under this Act.

13. (a) Where the rent of any occupancy-tenant has not been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act,

(b) or where the rent has been fixed by any such order, but the term for which it has been fixed has expired,

(c) or where ten years from the date on which an order fixing the rent has taken effect have expired,

(d) or where by order of the Local Government the assessment of the district has been revised before confirmation,

(e) or where the period of settlement of the district has come to an end,

the landholder may apply to enhance the rent of such tenant on one of the following grounds and on no others:—

(f) that the rate of the rent paid by such tenant is below the prevailing rate payable by the same class of tenants for land of similar quality with similar advantages;

(g) that the value of the produce has, or the productive powers of the land have, been increased otherwise than by the agency or at the expense of the tenant;

(h) that the quantity of land held by the tenant has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.

14. (a.) Where the rent of any ex-proprietary tenant has not been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act,

or where the rent has been fixed by such order, but the term for which it has been fixed has expired,

or where any of the events mentioned in section 13, clauses (c), (d) and (e) has occurred,

the landholder may apply to enhance or determine the rent of such tenant as if he were an occupancy-tenant: Provided that his rent shall be four annas in the rupee below the prevailing rate for land of a similar quality with similar advantages held by tenants-at-will.

(b.) Whenever the district or tahsíl, or other local area in which such land is situated, has been divided by the Settlement-officer into circles of like capacity and soil, the land of similar quality, with similar advantages, shall, for the purposes of this section and section 13, be selected from the same circle.

(c.) When the Settlement-officer has not so divided the district or other local area as aforesaid, the land regarding which the application has been made shall be compared with land of similar quality and with similar advantages, in the same tahsíl or in a tahsíl immediately adjacent.

15. Where the rent of any ex-proprietary tenant or occupancy-tenant has not been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act,

or where the rent has been fixed by such order, but the term for which it has been fixed has expired,

or where any of the events mentioned in section 13, clauses (c), (d) and (e) has occurred,

the tenant may apply for an abatement of his rent on one of the following grounds, and on no others:—

(a) that the area of the land held by him has been diminished by diluvion or otherwise:

(b) that the value of the produce has, or the productive powers of such land have, been decreased by any cause beyond his power.

16. Where the rent of any ex-proprietary or occupancy-tenant has been fixed by an order under this Act, such rent shall not be liable to be enhanced or abated until the occurrence of any of the events mentioned in section 13, clauses (c), (d) and (e), whichever first occurs.

17. Notwithstanding anything contained in section 16 where the rent of any ex-proprietary or occupancy-tenant has been fixed by order of a Settlement-officer under the North-Western Provinces Land Revenue Act, 1873, or by an order under this Act, the landholder may apply to enhance the rent of such tenant during the currency of the term for which the rent has been so fixed, on one of the following grounds, and on no others:—

(a) that the area of the tenants holding has been increased by alluvion or otherwise:

(b) that the productive powers of the land held by the tenant have, since the date of the order, been increased otherwise than by the agency or at the expense of the tenant:

And the tenant may apply for abatement of his rent on one of the following grounds, and on no others:—

(c) that the area of the land held by him has been diminished by diluvion or otherwise;

(d) that the productive powers of such land have been decreased by any cause beyond his control.

18. In the case of a tenant at fixed rates, the landholder may apply to enhance his rent on the ground that the area of the land in his holding has been increased by alluvion or otherwise,

and the tenant may apply for abatement of his rent on the ground that the area of the land in his holding has been diminished by diluvion or otherwise.

19. Applications for enhancement or abatement

Day before which applications for enhancement or abatement must be made. of rent must be made on or before the thirty-first day of August next before the year commencing on the first day of July from which the rent is to be enhanced or abated,

and every order for enhancement or abatement

Orders when to take effect. shall take effect from the first day of July next following the date of such order, unless for some reason, to be stated in writing, the Court thinks fit to order otherwise.

20. In determining, under this Chapter, the rate

Consideration of caste and class of tenant in determining rate of his rent. of rent payable by any tenant, his caste shall not be taken into consideration, unless it is proved that, by local custom, caste is taken into account in determining such rate;

and whenever it is found that, by local custom or practice, any class of persons, by reason of their having formerly been proprietors of the soil or otherwise, hold land at favourable rates of rent, the rate shall be determined in accordance with such custom or practice.

21. No tenant-at-will of land shall be liable to

Tenants-at-will. pay rent in excess of the rent (if any) payable by him in the previous year ending on the thirtieth day of June, unless the landholder and tenant have agreed as to the rent to be paid to the former by the latter, and such agreement has been recorded by the kánungo of the pargana in which such land is situate.

22. Notwithstanding anything hereinbefore

Rent of ex-proprietary or occupancy-tenant fixed by agreement. contained, when the rent of any ex-proprietary or occupancy-tenant has been fixed by agreement between the parties, such rent shall not be liable to enhancement or abatement for such term as may be agreed on.

22A. When any land is held of a landholder

Applications to survey land. by a tenant, such landholder or tenant may, in the absence of a written contract to the contrary, apply to the Collector of the District to have such land surveyed. The Collector, on receiving such application, may estimate the cost of such survey, and, by order in writing, require the applicant to deposit the amount of such estimate.

If the applicant deposits such amount within fifteen days from the date of the order, the Collector of the District shall issue a notice to the other party or parties to the tenancy to show cause, at a time and place specified in such notice, why the survey should not be made; and, if no such cause is so shewn, may, by an order in writing, direct the survey to be made by such person and at such time as he thinks fit.

A copy of such order shall be served on all the parties to the tenancy; and, if any party fails to attend at the appointed time, it shall not thereafter be open to him to question the correctness of the survey made in his absence.

If any party, on being called upon to show cause as aforesaid, makes any objection to the survey and such objection is overruled, he shall be liable to pay the costs (if any) occasioned by such objection.

Nothing in this section shall affect any power conferred by law to compel the attendance of any person at a survey.

23. Whenever for any cause the Local Govern-

ment remits or suspends for any period the payment of the whole or any part of the revenue payable in respect of any land, any officer em-

powered by the Local Government in this behalf may, subject to such rules as to appeal, confirmation or otherwise as may, from time to time, be prescribed by the Board, order that the rent of such land shall be remitted, or suspended for the period of such suspension of payment of revenue, as the case may be, to an amount which shall be equal to double the amount of the revenue of which the payment has been so remitted or suspended, or shall bear the same proportion to the whole of the rent payable in respect of the land as the revenue of which the payment has been so remitted or suspended bears to the whole of the revenue payable in respect of such land;

and, subject to the same rules, the landholder shall be bound by such order.

(d).—Leases.

24. Every tenant is entitled to receive from the

Contents of lease to landholder, and may at any time during the continuance of his holding, apply for a lease containing the following particulars:—

(a) the quantity of land held by him, and, where the fields have been numbered in a Government survey, the number of each field;

(b) the amount of annual rent payable for such land;

(c) the instalments in which, and the dates on which, such rent is to be paid;

(d) any special conditions of the lease;

(e) if the rent is payable in kind, or is calculated on a valuation of the produce, the proportion of produce to be delivered, the mode of valuation, and the time, manner and place of delivery.

Leases to which tenants at fixed rates are entitled.

25. Tenants at fixed rates are entitled to receive leases at such rates.

26. Ex-proprietary and occupancy-tenants are

Leases to which ex-proprietary and occupancy-tenants are entitled. entitled to receive leases at the rates determined in accordance with the law for the time being in force, or, where no rates have been so determined, at the rates actually paid by them when they demand such leases.

27. All other tenants are entitled to leases only

Leases to which other tenants are entitled. on such terms as may be agreed upon between them and the landholders.

28. Every landholder who grants a lease is en-

Landholder granting lease entitled to reciprocal engagement. entitled to receive a reciprocal engagement from the tenant, executed by the tenant, and conformable with the terms of the lease.

The tender to any tenant of a lease, such as he is entitled to receive, shall entitle the landholder to receive a reciprocal engagement from such tenant.

29. Notwithstanding anything contained in sec-

Lease for period exceeding term of landholder's engagement. tion 22, when any lease is granted, or any agreement is entered into, by any landholder under engagement with Government for his land, fixing the rent of land for any period exceeding the term of such engagement, and such term expires, such lease or agreement shall,

(a) when, on the expiration of such term, the revenue payable in respect of such land is enhanced—be voidable at the option of the landlord, unless the tenant agrees to pay such rent as a Settlement-officer or other person duly empowered in this behalf may, on the application of the landlord, determine to be fair and reasonable; and

(b) when such land-revenue is on the expiration of such term reduced—be voidable at the option of the tenant, unless the landlord agrees to accept such rent as a Settlement-officer or other person duly empowered in this behalf may, on the application of the tenant, determine to be fair and reasonable.

30. (a) And whereas all grants (whether in

Resumption of rent-free grants. writing or otherwise) for holding land exempt from the payment of rent which have been made since the first day of December, 1790, by any authority other than that of the Governor General in Council, were declared by Bengal Regulation XIX of 1793, section 10, to be null and void, and like provisions have been by divers Regulations applied to the several parts of the territories to which this Act extends, and the said Regulation XIX of 1793 also provided that no length of possession should be considered to give validity to any such grant, either with regard to the property in the soil or the rents of it, it is hereby further enacted as follows:—

(b) Applications by the proprietor to resume such

Applications to resume. grants or to assess rent on the land, shall be made to the Collector of the District or Assistant Collector, and, subject to rules to be made by the Local Government, shall be dealt with as other applications under this Act.

(c) Grants of land held under a written instru-

Validity of grants which grantor has expressly agreed not to resume. ment, by which the grantor expressly agrees that the grant shall not be resumed, shall be held valid as against him (but not as against his representatives after

his death) during the continuance of the settlement of the district in which the land is situate, which is current at the date of the grant.

(d) Where any land, having been for the fifty years

When rent-free tenure confers proprietary right. next before the twenty-second day of December, 1873, held rent-free and by at least two successors to the original grantee, was so held on that day, such holding shall be deemed to have conferred on the holder a proprietary right.

(e) Nothing in the Indian Limitation Act, 1877, shall bar the right to make an application under this Act to assess to rent land held rent-free.

(f) Nothing in this section shall apply to either of the following cases:—

(1) Where land was, previously to the passing of the North-Western Provinces Rent Act, 1873, held rent-free under a judicial decision:

(2) Where, previously to the passing of that Act, land held rent-free had been purchased for a valuable consideration and resumption thereof had been barred under Act No. X of 1859, section 28, or under the Indian Limitation Act, 1871, schedule II, No. 130.

(B).—Relinquishment and Ejectment.**31. Every tenant not holding under a lease**

Relinquishment of land by tenant not holding under a lease. shall continue liable for the rent of the land in his holding for the ensuing year, unless on or before the first day of May in any year he gives notice in writing to the landholder, or his recognized agent, of his desire to relinquish such land on the thirtieth day of June next ensuing, and relinquishes it accordingly; or unless it is let to any other person by such landholder or agent:

Provided that, whenever an order for the enhancement of the rent of any land held by any such

tenant is passed and the tenant within fifteen days of the date of such order gives to the landholder or his recognized agent notice in writing of his desire to relinquish such land at the commencement of the period in respect of which such enhancement takes effect, and relinquishes such land accordingly, he shall not be liable for the rent payable for such land in respect of any period subsequent to such relinquishment.

Explanation.—No notice can be given under this section in respect of a portion only of any land held under the same lease or engagement.

32. If the landholder or his agent refuses to re-

Service through tahsildar of notice of relinquishment. ceive any notice under section 31, or if he receives it, but refuses to sign and deliver a receipt for the same, the tenant may, before the expiration of the period limited for giving such notice, make an application to the tahsildar, who shall thereupon cause the notice to be served on such landholder or agent, the tenant paying the costs of service.

33. The notice shall, if practicable, be served

Mode of serving notice. personally on the landholder or his agent; but if the landholder or his agent cannot be found, or if he evades service of the notice, service may be made by affixing the notice at his usual place of residence, or, if he does not reside in the district wherein the

land is situate, at the *chaupál*, or other conspicuous place in the village where the land is situate.

Where the delay in serving the notice is owing to the fault of the landholder or his agent, the notice shall be deemed to have been served at the first attempt to serve it.

23A. When any such notice has been received

37. The notice of ejectment shall be written in Language and contents of notice. the vernacular language and character of the district :

it shall specify the land from which the tenant is to be ejected ;

and it shall inform him that he must vacate such land ; or that, if he means to contest the right to eject him, he must apply to the Collector

holder, and the proprietor's right of re-entry at the end of the term is contingent on the re-payment of such advance either in money or by the usufruct of the land. In all such cases the landholder must proceed by suit in the Civil Court.

41. If the landholder expressly authorise the tenant, on whom the notice of ejectment has been served, or against whom any proceedings in ejectment under section 40 have been taken, to remain in occupation of the land, and to prepare it for the harvest, the proceedings shall become void.

42. (a). Any tenant ejected in accordance with the provisions of this Act, shall be entitled to any growing crops or other ungathered products of the earth belonging to the tenant, and growing on the land at the time of his ejectment, and to use the land for the purpose of tending and gathering in such crops or other products, paying adequate rent therefor:

(b). Provided that, if the landholder desire to purchase such crops or other products, he may tender their price to the tenant; and thereupon the right of the tenant to such crops and other products, and to use the land for the purpose aforesaid, shall cease.

(c). In the case of a dispute under this section, the Collector of the District or Assistant Collector may, on the application of the landholder or tenant, award the rent and price so payable; and the amount of such award, or of any tender accepted under this section, shall be recoverable as an arrear of rent by suit under this Act.

(d). The rent, if any, payable to the landholder by the tenant at the time of his ejectment may be set-off against the price of the said crops or other products.

43. (a). Wherever rent is taken by division of the produce in kind, or by estimate or appraisement of the standing crop, or other procedure of a like nature, requiring the presence both of the cultivator and landholder, either personally or by agent, if either landholder or tenant, personally or by agent, neglect to attend at the proper time, or if there is a dispute as to the amount or value of the crop,

an application may be presented by either party to the Collector of the District or Assistant Collector, requesting that a proper officer be deputed to make the division, estimate or appraisement.

(b). On receiving such application, the Collector of the District or Assistant Collector shall issue a written notice to the opposite party or his agent, to attend on the date and at the time specified in the notice, and shall depute an officer before whom such division, estimate or appraisement shall be made.

(c). If on or before the date appointed, the dispute has not been amicably adjusted, three residents of the village or neighbourhood shall be appointed assessors; one by each of the parties and one by the officer deputed to divide the grain or estimate or appraise the crops, and the officer

deputed shall decide the amount of rent payable by their award, and shall give to the party applying a written authority to divide the grain or cut the crops:

(d). Provided that, if either party fail to attend, the officer deputed shall nominate an assessor on his behalf.

(e). The officer deputed shall report his proceedings to the Collector of the District or Assistant Collector, who shall determine the amount of costs properly incurred under this section, and the share of the costs to be paid by either party.

(C).—*Compensation for Improvements made by Tenants.*

44. If any tenant, or any person from whom he has inherited or purchased, make any such improvements on the land in his possession as are hereinafter mentioned, neither he nor his representative shall be ejected from the same land without payment of compensation for such improvements.

Explanation.—In this section the word "tenant" does not include a thékadár or a katkanadár and the word "improvements" means works by which the annual letting value of the land has been, and at the time of demanding compensation continues to be, increased, and comprises—

(a) tanks, wells and other works for the storage, supply or distribution of water for agricultural purposes,

(b) works for the drainage of land, or for the protection of land from floods or from erosion or other damage by water,

(c) the reclaiming, clearing, or enclosing of lands for agricultural purposes,

(d) the renewal or re-construction of any of the foregoing works, or alterations therein, or additions thereto.

Notwithstanding anything hereinbefore contained, no tenant, other than a tenant at fixed rates or an occupancy-tenant, shall be entitled to compensation in respect of any improvement made without the consent of the landholder after this Act comes into force.

45. Such compensation may, at the option of the landholder or his representative, be made—

1st,—by payment in money;

2nd,—by a rent to be charged on the land;

3rd,—by the grant of a beneficial lease of the land, by the landholder or his representative, to the tenant or his representative;

4th,—partly by one or by any two of the said ways, and partly by the others or other of the same ways.

46. In case of difference as to the amount or value of the compensation tendered, either party may apply to the Collector of the District or Assistant Collector stating the matter in dispute, and requesting a determination thereof.

On receiving such application, the Collector of the District or Assistant Collector shall—

(a) cause notice thereof to be served on the other party,

(b) take such evidence as the parties or either of them may adduce,

(c) make such further inquiry as the Collector of the District or Assistant Collector may deem necessary, and

(d) determine the amount of the payment in money, and the amount and incidence of the rent-charge, and the terms of the lease, or any of such matters.

47. In determining the amount or value mentioned in section 46, or the terms of such lease, the Collector of the District or Assistant Collector shall take into account any assistance given to the tenant by the landholder either directly in money, material or labour, for the purpose of making such improvements, or indirectly by allowing the tenant to hold at a favourable rate of rent.

(D).—*Compensation for wrongful acts and omissions.*

48. Every tenant from whom any sum is exacted in excess of the rent specified in his lease or payable under the provisions of this Act,

Right of tenant to compensation for exactions in excess of rent or for withholding receipt.

and every tenant from whom a receipt is withheld for any sum of money paid by him as rent, shall be entitled to recover from the landholder compensation not exceeding double the amount so exacted or paid

Receipts for rent shall specify the period or crop on account of which the rent is acknowledged to have been paid;

and any refusal to make such specification shall be held to be a withholding of a receipt.

Explanation.—In this section the word “tenant” does not include a thékadár or a katkanadár.

49. If payment of rent, whether the same be legally due or not, is extorted from any tenant by illegal confinement or other duress, he shall be entitled to recover from the person guilty of such extortion such further compensation, not exceeding the sum of two hundred rupees, as the Collector of the District or Assistant Collector thinks reasonable.

An award of compensation under this section shall not bar or affect any penalty or punishment to which the person guilty of such extortion may be subject under the Indian Penal Code.

Liability to punishment for extortion not affected.

(E).—*Deposit of Rent in Court.*

50. If any tenant tenders to the landholder full payment of the rent due from him, and if the amount so tendered be not accepted, and a receipt for the amount forthwith granted, the tenant may thereupon apply to the Collector of the District or Assistant Collector for leave to deposit such amount in his Court to the credit of the landholder.

51. The application to the Collector of the District or Assistant Collector shall be as nearly as may be in the form (A) in the first schedule hereto annexed, and shall be verified in the manner hereinafter prescribed for the verification of plaints.

Form and verification of application.

And the person making the verification shall be punishable, if the application contain any averment which he knows or believes to be false, or does not know or believe to be true.

Penalty for false statement.

52. The Collector of the District or Assistant Collector shall receive the amount which the tenant desires to deposit, and shall thereupon issue to the person to whose credit it has so been deposited, a notice in English or the vernacular language of the district in the form (B) in the first schedule hereto annexed, or to the like effect.

Notice to issue on deposit being made.

And such deposit shall, in all questions between the landholder and the tenant, be deemed to be a payment made by the tenant to the landholder on account of the rent.

53. Such notice shall be served through the tahsildár upon the person to whom it is addressed, or upon his recognized agent.

Mode of serving notice.

In their absence, the notice shall be affixed at the *chaupál*, or other conspicuous place in the village in which the land for which the rent is due is situate.

54. If at any time before the expiration of three years from the date of the deposit the person on whom such notice is served, or his recognized agent, appears, and applies that the money in deposit be paid to him, it shall be paid accordingly, unless it has been repaid or paid in accordance with the provisions next hereinafter contained.

Payment to person served with notice on his application.

55. If no application be made by such person or his recognized agent, the sum shall be repaid to the depositor on the expiration of three years from the date of the deposit.

Refund to depositor.

And at any time before the expiration of such period, on the joint application of the depositor and the person to whose credit the said sum was deposited, such sum shall be paid in such manner as the joint applicants desire.

55A. When, owing to the death of the landlord or other cause, two or more persons severally claim the right to collect the rent from a tenant, the tenant may apply to the Collector of the District or the Assistant Collector for leave to deposit in Court the full amount of rent due from him, and such deposit, if made with the leave of the Collector or Assistant Collector, shall, in all questions between the landholder and the tenant, be deemed to be a payment made by the tenant to the landholder on account of the rent.

Deposit in Court of rent claimed by two or more persons.

The Collector of the District or Assistant Collector may, after such enquiry as he thinks necessary, direct payment of the amount deposited to such one of the persons claiming such rent as appears to him entitled to receive the same, or may order the same to remain in deposit pending decision by a competent Court.

No suit shall lie against the Secretary of State for India in Council or against any officer of Government in respect of any payment made under this section, but nothing herein contained shall affect the right of any person entitled to such

payment to recover the amount thereof from any other person to whom it has been paid.

CHAPTER III.

DISTRESS.

56. The produce of all land in the occupation of a cultivator shall be deemed to be hypothecated for the rent payable in respect of such land; and until such rent has been satisfied, no other claim on such produce shall be enforced by sale in execution of decree or otherwise;

and when an arrear of rent is due from any cultivator, the person entitled to receive rent immediately from him may, instead of suing for the arrear as hereinafter provided, recover the same by distress and sale of the produce of the land in respect of which the arrear is due, under the rules contained in this chapter.

57. Provided—

(a) that when a cultivator has given security for the payment of his rent, the produce of the land for the rent of which security has been given shall not be liable to be distrained:

(b) that no sharer in any mahál shall have power to distrain upon any cultivator unless he is entitled to collect the whole rent from such cultivator:

(c) that no sharer in a joint undivided mahál shall exercise such power otherwise than through a manager authorized to collect the rents of the whole mahál on behalf of all the sharers therein:

(d) that in pattidári maháls distress shall be made only through a lambardár, or, where the rent of a pattí is not collected by a lambardár, through the pattidár who is entitled to collect the rent.

58. A distress shall not be made for any arrear which has been due in respect of any land for a longer period than one year:

nor for the recovery of any sum in excess of the rent payable for the same land in the preceding year, unless the rent has been enhanced under the provisions hereinbefore contained, or by order of a Settlement-officer, or unless the cultivator has agreed to pay such excess and such agreement has been attested before the kánungo.

59. The power to distrain conferred by sections 56 and 57 may be exercised by managers under the Court of Wards and other persons lawfully entrusted with the charge of immoveable property;

and also by the agents employed by such persons as aforesaid, in the collection of rent, if expressly authorized by power-of-attorney in that behalf:

If any wrongful act is committed by any such agent, under colour of the exercise of the said power, such agent and his principal shall be jointly and severally liable to make compensation for such act.

60. When any person, empowered to distrain property under section 56, servants employed to section 57 or section 59, employs a servant or other person to make the distress, he shall give him a written authority for the same, and the distress shall be made in the name of the person giving such authority.

61. Standing crops and other ungathered products of the earth, and crops or other products when reaped or gathered, and deposited in any threshing-floor or place for treading out grain or the like, whether in the field or within a homestead, may be distrained by persons invested with power to distrain under the provisions of this Act.

But no such crops or products, other than the produce of the land in respect of which an arrear of rent is due, or of land held under the same engagement, and no grain or other produce after it has been stored by the cultivator, and no other property whatsoever, shall be liable to be distrained under this Act.

62. Before or at the time when a distress is made under this Act, the distrainer shall cause the defaulter to be served with a written demand for the amount of the arrear, together with an account exhibiting the grounds on which the demand is made.

The demand and account shall, if practicable, be served personally on the defaulter; or, if he abscond or conceal himself, so that they cannot be so served, shall be affixed at his usual place of residence.

63. Unless the amount of the demand is immediately paid or tendered, the distrainer may distrain property as aforesaid equal in value, as nearly as may be, to the amount of the arrear and the costs of the distress; and shall prepare a list or description of the said property, and deliver a copy of the same to the owner, or, if he be absent, affix it at his usual place of residence.

64(a). Standing crops and other ungathered products may, notwithstanding the distress, be reaped and gathered by the cultivator, and he may store the same in such granaries or other places as are commonly used by him for the purpose.

(b). If the cultivator neglect to do so, the distrainer shall cause the said crops or products to be reaped or gathered, and in such case shall store the same either in such granaries or other places as aforesaid, or in some other convenient place in the neighbourhood.

(c). In either case the distrained property shall be placed in the charge of some person appointed by the distrainer for the purpose.

(d). Crops or products which, from their nature, do not admit of being stored, may be sold before they are reaped or gathered, under the rules hereinafter provided; but in such case, the distress shall be made at least twenty days before the time when the crops, or products, or any part of the same are fit for reaping or gathering.

65. If a distrainer is opposed, or apprehends resistance, and desires to obtain the assistance of a public officer, he may apply to the Collector of the District or Assistant Collector, who may, if he thinks necessary, depute an officer to assist the distrainer in making the distress.

66. If at any time after property has been distrained and before the day fixed for putting it up to sale as hereinafter provided, the owner of the property tenders payment of the arrear demanded of him, and of the expenses of the distress, the distrainer shall receive the same, and shall forthwith withdraw the distress.

67. Within five days from the time of the storing of any distrained crops or products, or, if the crops or products do not, from their nature admit of being stored, within five days from the time of making the distress,

the distrainer shall apply for sale of the same to the officer for the time being authorized by the Local Government to sell distrained property within the tahsil in which they are situate.

68. The application shall be in writing, and shall contain—

- (a) an inventory or description of the property distrained,
- (b) the name of the defaulter and his place of residence,
- (c) the amount due, and the date of the distress, and
- (d) the place in which the distrained property is.

Together with the application, the distrainer shall deliver to the said officer the fee for the service of a notice upon the defaulter as hereinafter provided.

69. Immediately on receipt of the application, the said officer shall send a copy of it to the Collector of the District or Assistant Collector,

and shall serve a notice in the form (C) contained in the first schedule hereto annexed, or to the like effect, on the person whose property has been distrained, requiring him either to pay the amount demanded, or to institute a suit to contest the demand before the Collector of the District or Assistant Collector, within the period of fifteen days from the receipt of the notice.

He shall at the same time send to the Collector of the District or Assistant Collector, for the purpose of being put up in his office and in the office of the tahsildar, a proclamation fixing a day for the sale of the distrained property, which shall not be less than twenty days from the date of the application; and shall deliver a copy of the proclamation to the peon charged with the service of the notice, to be put up by him in the place where the distrained property is deposited.

The proclamation shall contain—

- (a) a description of the property, and shall specify—
- (b) the demand for which it is to be sold, and
- (c) the place where the sale is to be held.

70. If a suit is instituted before the Collector of the District or Assistant Collector in pursuance of the aforesaid notice, the Collector of the District or Assistant Collector shall send to the officer referred to in section 67, or, if so requested, shall deliver to the owner of the distrained property, a certificate of the institution of such suit;

and on such certificate being received by, or presented to, the said officer, he shall suspend the sale.

71. A person whose property has been distrained in manner hereinbefore provided may, immediately after the distress, and before the issue of notice of sale, institute a suit to contest the demand of the distrainer.

When such suit is instituted, the Collector of the District or Assistant Collector shall proceed in the manner prescribed in the last preceding section.

If, thereafter, application for the sale of the property is made to the said officer, he shall send a copy of the application to the Collector of the District or Assistant Collector, and suspend further proceedings, pending the decision of the case.

72. The person whose property has been distrained may, at the time of instituting any such suit as aforesaid, or at any subsequent period, execute a bond with a surety, binding himself to pay whatever sum may be adjudged to be due from him, with interest and costs of suit;

and when such bond is executed, the Collector of the District or Assistant Collector shall give to the owner of the property a certificate to that effect, and, if so requested, shall serve the distrainer with notice of the same;

and upon such certificate being presented to the distrainer by the owner of the property, or served on him by order of the Collector of the District or Assistant Collector, the property shall be released from distress.

73. If the institution of a suit to contest the demand of the distrainer has not been certified, in manner hereinbefore provided, to the said officer, on or before the day fixed in the proclamation of sale, he shall, unless the said demand, with such costs of the distress as are allowed by him, be discharged in full, proceed, in manner hereinafter mentioned, to sell the property or such part of it as may be necessary to satisfy the demand with the costs of distress and sale.

74. The sale shall be held at the place where the distrained property is, or at the nearest place of public resort, if the said officer is of opinion that it is likely to sell there to better advantage.

The property shall be sold by public auction, in one or more lots, as the officer holding the sale may think advisable;

and if the demand, with the costs of distress and sale, be satisfied by the sale of a portion of the property, the distress shall be immediately withdrawn with respect to the remainder.

75. If, on the property being put up for sale, a fair price (in the estimation of the officer holding the sale) be not offered for it, and if the owner of the property, or some person authorized to act on his behalf, apply to have the sale postponed until the next day, or, if a market be held at the place of sale, the next market-day, the sale shall be postponed until such day and shall be then completed whatever price may be offered for the property.

76. The price of every lot shall be paid for in ready money at the time of sale, or as soon thereafter as the officer holding the sale thinks necessary; and, in default of such payment, the property shall be put up again and sold, and the deficiency in price (if any) which may happen on such second sale and all expenses attending such second sale shall, at the instance either of the distrainer or the owner of the property, be recoverable from the defaulter under the rules hereinafter contained for the execution of a decree for rent.

When the purchase-money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and the price paid.

77. From the proceeds of every sale of distrained property under this Act, the officer holding the sale shall make a deduction at the rate of one anna in the rupee on account of the costs of the sale, and shall send the amount so deducted to the Collector of the District or Assistant Collector.

He shall then pay to the distrainer the expenses incurred by the distrainer on account of the distress, and of the issue of the notice and proclamation of sale prescribed in section 69, to such amount as, after examining the statement of expenses furnished by the distrainer, he thinks proper to allow.

The remainder shall be applied to the discharge of the arrear for which the distress was made, with interest thereon up to the day of sale;

and the surplus (if any) shall be delivered to the person whose property has been sold.

78. Officers holding sales of property under this Act, and all persons employed by or subordinate to such officers, are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

79. Officers holding sales under this Chapter are required to bring to the notice of the Collector of the District or Assistant Collector any material irregularities committed by distrainers under colour of this Act;

and if, in any case, on proceeding to hold any such sale, the officer holding it find that the owner of the property has not received due notice of the distress and intended sale, he shall postpone the sale and report

the case to the Collector of the District or Assistant Collector, who shall thereupon direct the issue of another notice and proclamation of sale under section 69, or pass such other order as he thinks fit.

80. When an officer goes to any place for the purpose of holding a sale under this Act, and no sale takes place, either for the reason stated in section 79, or because the demand of the distrainer has been previously satisfied without any intimation of such satisfaction having been given by the distrainer to such officer, the charge of one anna in the rupee on account of expenses shall be leviable, and shall be calculated on the estimated value of the distrained property.

If the distrainer's demand be not satisfied until the day fixed for the sale, the charge for expenses shall be paid by the owner of the property, and may be recovered by the sale of such portion thereof as may be necessary.

In every other case it shall be paid by the distrainer, and may be recovered by attachment and sale of his property under the warrant of the Collector of the District or Assistant Collector:

Provided that in no case shall a larger amount than ten rupees be recoverable under this section.

81. When a suit has been instituted to contest the demand of a distrainer, and the distrained property has not been released on security, if the demand or any portion of it is adjudged to be due, the Collector of the District or Assistant Collector shall issue an order to the officer authorizing the sale of such property;

and, on the application of the distrainer within five days from the receipt of such order by the officer, such officer shall publish a second proclamation in the manner prescribed in section 69, fixing another day for the sale of the distrained property, which shall not be less than five nor more than ten days from the date of the proclamation;

and, unless the amount adjudged to be due with the costs of distress be paid, shall proceed to sell the property in the manner hereinbefore provided.

82. (a) In all suits instituted to contest the distrainer's demand, he shall be required to prove the arrear in the same manner as if he had himself brought a suit for the amount under the provisions hereinafter contained.

(b) If the demand or any part thereof is found to be due, the Collector of the District or Assistant Collector shall make a decree for the amount in favour of the distrainer, and such amount may be recovered by sale of the property, as provided in the last preceding section, if the distress has not been withdrawn;

and, if any balance remain due after such sale, by execution of the decree against the person and any other property of the defaulter,

or if the property have been released on security, by execution of the decree against the person and property of the defaulter and of his surety.

(c) If the distress is adjudged to be vexatious or groundless, the Collector of the District or Assistant Collector, besides directing the release of the distrained property, may award such compensation to the plaintiff as the circumstances of the case require.

83. (a) If any person claim as his own, property which has been distrained for arrears of rent alleged to be due from any other person, the claimant may institute a suit against the distrainer and such other person, to try the right to the property, in the same manner and under the same conditions as to the time of instituting the suit and to the consequent postponement of sale, as a person whose property has been distrained for an arrear of rent alleged to be due from him may institute a suit to contest the demand.

(b) When any such suit is instituted, the property may be released upon security being given for the value of the same.

(c) If the claim is dismissed, the Collector of the District or Assistant Collector shall make an order for the sale of the property, or for the recovery of the value thereof, as the case may be, for the benefit of the distrainer.

(d) If the claim is upheld, the Collector of the District or Assistant Collector shall decree the release of the distrained property with costs, and such compensation (if any) as the circumstances of the case require:

(e) Provided that no claim to any produce of land liable to distress under this Act, which at the time of the distress may have been found in the possession of a defaulting cultivator, shall bar the prior claim of the person entitled to the rent of the land, nor shall any attachment in execution of a judgment of any civil Court prevail against such prior claim.

84. If, in any case in which property has been distrained for an arrear of rent, and a suit has been instituted to contest the demand, the right to distrain for such arrears is claimed by or on behalf of any person other than the distrainer, on the ground of such other person being actually and in good faith in the receipt and enjoyment of the rent of the land, such other person shall be made a party to the suit, and the question of the actual receipt and enjoyment of the rent by him before and up to the time of the commencement of the suit shall be enquired into; and in deciding the suit the result of such inquiry shall be taken into consideration:

Provided that the decision of the Collector of the District or Assistant Collector shall not affect the right of any person who may have a legal title to the rent of the land to establish his title by suit in the civil Court if instituted within one year from the date of the decision.

85. If any person whose property has been distrained for the recovery of a demand not justly due, or of a demand due or alleged to be due from some other person, is prevented by any sufficient cause from bringing a suit to contest the demand or to try the right to the property, as the case may be, within the period allowed by section 69 or 83, and his property is in consequence sold, he may, nevertheless, institute a suit under this Act to recover compensation for such distress and sale.

86. If any person empowered to distrain property, or employed for the purpose under a written authority by a person so empowered, distrain or sell, or cause to be sold, any property for the recovery of an arrear of rent alleged to be due, otherwise than according to the provisions of this Act,

or if any distrained property is lost, damaged, or destroyed by reason of the distrainer not having taken proper precautions for the due keeping and preservation thereof,

or if the distress is not immediately withdrawn when it is required to be withdrawn by any provision of this Act,

the owner of the property may institute a suit under this Act to recover compensation for any injury which he has thereby sustained through any act or omission mentioned in the former part of this section.

87. If any person not empowered to distrain property under section 56, 57 or 59, nor employed for the purpose under a written authority by a person so empowered, fraudulently distrains or sells, or causes to be sold, any property under colour of this Act, the owner of the property so distrained or sold may institute a suit under this Act to recover compensation from such person for any injury which the plaintiff has sustained from the distress or sale,

and the defendant shall be held to have committed criminal trespass, and shall be subject to the penalties provided for that offence by the Indian Penal Code, in addition to any damages which may be awarded against him in such suit.

88. Provided that every suit instituted under any of the three last preceding sections shall be commenced within the period allowed by section 94.

89. (a) If any person resists a distress of property duly made under this Act, or forcibly or clandestinely removes any distrained property, the Collector of the District or Assistant Collector in charge of the Sub-division, upon complaint being made within fifteen days from the date of such resistance or removal, may cause the person accused to be arrested and brought with all convenient speed before the Collector or Assistant Collector, who shall, if possible, proceed forthwith to try the case.

(b) If the case cannot be at once heard, the Collector of the District or Assistant Collector may, if he think fit, require the party arrested to give

security for his person, and, in default of such security, may commit him to the civil jail until the case is tried,

and if the offence be proved and the offender be the owner of the property concerned, the Collector of the District or Assistant Collector may order him to be imprisoned in the civil jail for a term not exceeding six months, unless the whole arrear due to the distrainer, with all reasonable expenses and costs, is previously to the expiration of such term paid or levied under warrant of the Collector of the District or Assistant Collector by distress and sale of the property of the offender.

(c) If the offender be not the owner of the property concerned, he shall make good to the distrainer the value of the same, and shall further be liable to a fine not exceeding one hundred rupees, or, in default of payment thereof, to imprisonment in the civil jail for a term which may extend to two months.

90. All proceedings of officers distraining, or Proceedings of officers assisting distrainers, or subject to revision and holding sales, under this orders of Collector. chapter, shall be subject to the revision and orders of the Collector of the District or Assistant Collector in charge of a Sub-division of the District.

CHAPTER IV.

PROCESS.

91. (a) Every process issued by a Collector of a District or Assistant Collector under this Act shall be under his seal and signature, and shall be served or executed by the Názir, or by such other officer as the Collector of the District or the Assistant Collector may direct, at the cost of the party at whose instance it is issued.

(b) The amount of such cost, and, in the case of summons to a witness, the sum required for his travelling expenses, shall be deposited in Court before the process is issued:

(c) Provided that, if in any case the Collector of the District or the Assistant Collector is satisfied that a party is unable to pay the cost of any necessary process, he may direct such process to be served free of charge.

92. Any resistance or opposition to the lawful process of a Collector of the District or Assistant Collector under this Act may be punished by him according to the provisions of the law for the time being in force for the punishment of resistance or opposition to the processes of the Courts of civil justice.

When, in any such case, the offender is not present, the Collector of the District or Assistant Collector may summon him to answer to the charge: and, if after due service of the summons he fails to attend, may issue a warrant for his arrest.

CHAPTER V.

JURISDICTION OF COURTS.

93. Except in the way of appeal as hereinafter provided, no Courts other than Courts of Revenue shall take cognizance of any dispute or matter in which

any suit of the nature mentioned in this section might be brought, and such suits shall be heard and determined in the said Courts of Revenue in the manner provided in this Act, and not otherwise:

(a) suits for arrears of rent, or, where rent is payable in kind, for the money-equivalent of rent, on account of land or on account of any rights of pasturage, forest-rights, fisheries or the like;

(b) suits to eject a tenant for any act or omission detrimental to the land in his occupation or inconsistent with the purpose for which the land was let;

(c) suits to cancel a lease for the breach of any condition binding on the tenant, and which, by law, custom or special agreement, involves the forfeiture of the lease;

(cc) suits for compensation for or to prohibit, any act, omission or breach mentioned in clause (b) or clause (c);

(d) suits for the recovery of any over-payment of rent, or for compensation under section 48 or 49;

(e) suits for compensation for withholding receipt for rent paid;

(f) suits for contesting the exercise of the powers of distress conferred on landholders and others by this Act, or anything purporting to be done in the exercise of the said power, or for compensation for wrongful acts or omissions of a distrainer;

(g) suits by lambardárs for arrears of Government-revenue, payable through them by the co-sharers whom they represent, and for village-expenses and other dues for which the co-sharers may be responsible to the lambardár;

(h) suits by recorded co-sharers for their recorded share of the profits of a mahál, or any part thereof, after payment of the Government-revenue and village-expenses, or for a settlement of accounts;

(i) suits by muáfídar, or assignees of the Government-revenue, for arrears of revenue due to them as such;

(j) suits by taluqdárs and other superior proprietors for arrears of revenue due to them as such;

(k) suits by recorded co-sharers to recover from a recorded co-sharer who defaults arrears of revenue paid by them on his account.

94. Suits for arrears of rent or revenue, or for a share of the profits of a mahál, or of village-expenses or other dues, shall not be brought after three years from the day on which the arrears or share became due.

Suits relating to distress, not being suits to contest the demand or to try the right to the property, shall not be brought after three months from the day on which the right to sue accrued:

All other suits must be brought within one year from the day on which the right to sue accrues, unless otherwise specially provided for in this Act.

The day on which the arrears become due or the day on which the right to sue accrues (as the case may be) shall be excluded in computing the periods of limitation prescribed by this section.

In the absence of any express agreement among the co-sharers and of any order by the Settlement-officer under the North-Western Provinces Land-revenue Act, 1873, section 65, clause (g), the

Board may from time to time, with the previous sanction of the Local Government, make rules for fixing the dates on which profits shall be divisible by the lambardárs.

95. No Courts other than Courts of revenue shall take cognizance of any dispute or matter on which any application of the nature mentioned in this section might be made: and such applications shall be heard and determined in the said Courts in manner provided under this Act, and not otherwise:—

(a) Application to determine the nature and class of a tenant's tenure, under section 10.

(b) Application by a landholder, or his agent, to compel a patwári to produce his accounts relating to land.

(c) Application to resume rent-free grants under section 30, or to assess to rent land previously held rent-free.

(d) Application from a landholder to eject a tenant under section 35, or to have a notice of ejectment issued and served under section 38.

(e) Applications made by a tenant under section 39.

(f) Application from a landholder, under section 40, for assistance to eject a tenant.

(g) Application from a tenant or landholder to determine the value of any standing crop, or un-gathered products of the earth, belonging to the tenant and being on the land at the time of his ejectment, under section 42.

(h) Application by a landholder to determine rent payable for land used by a tenant for the purpose of tending or gathering in the crop, under section 42.

(i) Application by a landholder or tenant for assistance in the division or appraisal of a standing crop, under section 43.

(j) Application by a landholder or tenant to determine compensation for improvements of land.

(k) Application by a tenant for leave to deposit rent.

(l) Application for enhancement or determination of rent.

(m) Application for compensation for wrongful dispossession.

(n) Application for the recovery of the occupancy of any land of which a tenant has been wrongfully dispossessed.

(o) Application for abatement of rent.

(p) Application for leases or counterparts, and for the determination of the rates of rent at which such leases or counterparts are to be delivered.

(q) Application under section 7 to have the holding of an ex-proprietary tenant divided off.

(r) Application under section 22 A to survey land.

(s) Application under section 33 A to have a notice of relinquishment declared invalid.

(t) Application to take out of deposit any amount deposited under section 55 A.

For the purposes of the Court-fees Act, 1870, applications under clauses (c), (l), (m), (n), (o) and (p) of this section shall be deemed to be plaints in suits.

95A. When any order has been made on an application under this Act, no process for the execution of such order shall be issued on an application made after the lapse of one year from the date of such order, except when special provision is otherwise made in this Act.

96. (a) All applications under section 95 shall be made in the district in which the land, crops or products referred to is or are situate.

(b) All orders passed on applications under section 95 shall be proved in the same manner, and when proved shall have the same effect, as if they were judgments of the civil Courts.

(c) In cases wherein a specific sum of money is adjudged to be due, or any costs or damages are awarded, all such orders may be executed by any process in use for the recovery of an arrear of revenue or rent.

(d) In cases wherein possession of immoveable property is adjudged, the officer making the award may deliver over possession in the same manner, and with the same power, in regard to contempts, resistance and the like, as may be lawfully exercised by the civil Courts in execution of their own decrees.

(e) Applications under clauses (m) and (n) of section 95 shall not be brought after six months from the date of the wrongful dispossession.

96A. All suits and applications under this Act may, with the consent of the parties, be referred to arbitration under section 220 to section 231 (both inclusive) of the North-Western Provinces Land-revenue Act, 1873.

97. The Local Government may invest any officer with the powers of an Assistant Collector of the first or second class under this Act, and may at any time withdraw such powers.

98. Assistant Collectors of either class shall have, as such, power to try suits and applications of the following descriptions:—

(a) suits for arrears of rent or the money equivalent of rent on account of land, or on account of any rights of pasturage, forest rights, fisheries or the like;

(b) suits for compensation for withholding receipts for rent paid, under section 48;

(c) suits to contest the exercise of the powers of distress conferred on landholders and others by this Act, or anything purporting to be done in exercise of the said powers, or for compensation for wrongful acts or omissions of a distrainer;

(d) suits by lambardárs for arrears of Government-revenue, payable through them by the co-sharers whom they represent, and for village-expenses and other dues, for which the co-sharers may be responsible to the lambardár;

(e) suits by muáfídárs or assignees of the Government-revenue for arrears of revenue due to them as such;

(f) suits by taluqdárs or other superior proprietors for arrears of revenue due to them as such;

(g) applications by a landholder, or by an agent employed by a landholder, to compel the production of accounts by patwáris;

(h) applications by a tenant or landholder to determine the value of any standing crops or un-gathered products of the earth, and being on the land at the time of his ejectment, under section 42;

(i) applications by a landholder to determine the amount of rent payable by a tenant using land for the purpose of tending or gathering in crops, under section 42;

(j) applications by a landholder or a tenant for assistance in the division or appraisal of standing crops, under section 43;

(k) applications by tenants for leave to deposit rent;

(l) suits under section 93, clause (k), to recover arrears of revenue.

(m) applications under section 22 A to survey land.

99. Assistant Collectors of the first class, in addition to the suits and applications specified in section 98, shall have power to try suits and applications of the following descriptions:—

Additional suits and applications triable by Assistant Collectors, first class.

(a) suits to eject a tenant for any act or omission detrimental to the land in his occupation, or inconsistent with the purpose for which the land was let;

(b) suits to cancel a lease for any breach of any condition binding on the tenant;

(bb) suits for compensation for, or to prohibit, any act, omission or breach mentioned in clause (a) or clause (b);

(c) suits for the recovery of any over-payment of rent or for compensation, under section 48 or section 49;

(d) suits by co-sharers for their shares of the profits of a mahāl or any part thereof, after payment of the Government-revenue and village-expenses, or for a settlement of accounts;

(e) applications by a landholder to eject a tenant, under section 35;

(f) applications under section 39 by a tenant contesting notice of ejectment;

(g) applications by a landholder under section 40, for assistance to eject a tenant, on whom notice of ejectment has been served;

(h) applications for compensation for wrongful dispossession;

(i) applications by a landholder or tenant to determine the amount to be paid as compensation for improvements;

(j) applications to recover the occupancy of any land from which a tenant has been wrongfully dispossessed by the landholder;

(k) applications under section 30 for the resumption of rent-free grants or for the assessment to rent of land hitherto held rent-free;

(l) applications under section 7 to have the holding of an ex-proprietary tenant divided off;

(m) applications under section 33 A to have a notice of relinquishment declared invalid;

(n) applications to take out of deposit amounts deposited under section 55 A.

100. In addition to the powers specified in sections 98 and 99, an Assistant Collector of the first class, specially empowered by Government in this behalf, shall have power to try the following applications:

Additional applications triable by Assistant Collector, first class, with special powers.

(a) applications for enhancement or determination of rent;

(b) applications for abatement of rent;

(c) applications for leases or counterparts, and the determination of the rates of rent at which such leases or counterparts are to be delivered;

(d) applications to determine the nature or class of a tenant's tenure.

101. The Collector of the District, or any Assistant Collector in charge of a sub-division of a district, may make over any case, or

class of cases, for inquiry and decision, from his own file, to any of his subordinates competent to deal with such case or class of cases under the provisions of this Act.

102. Collectors of Districts, and Assistant Collectors in charge of sub-divisions of districts, may, respectively, withdraw any case or class of cases from any officers subordinate to them, and may deal with such case or class of cases themselves, or refer it for disposal to any other such Revenue-officer competent to deal with the same under the provisions of this Act.

103. The Collector of the District may exercise—
Powers exercisable by Collector of District. (a) all powers given by this Act to Collectors of Districts,

(b) all powers which by this Act are conferred, or can be conferred, on Assistant Collectors.

The Local Government may invest any officer in charge of a sub-division of a district with all or any of the powers conferred by this Act on a Collector of a District.

In conferring powers under this Act, the Local Government may empower persons specially by name, or classes of officials generally by their official titles.

CHAPTER VI.

PROCEDURE IN SUITS UP TO JUDGMENT.

104. Suits under this Act shall be instituted in the district in which the subject of the suit, or some part thereof, is situate,

and all such suits shall be commenced by presenting to the Court a plaint, which shall contain—

(a) the name, description and place of abode of the plaintiff;

(b) the name, description and place of abode of the defendant, so far as they can be ascertained;

(c) the subject-matter of the claim, and its amount or value computed according to the Court-fees Act, 1870; and

(d) the date on which the right to sue accrued.

105. For the purpose of suing or being sued under this Act, the managers of mahāls, whether held under the Court of Wards or under direct management, shall be deemed to be landholders.

106. No co-sharer in an undivided property shall, in that character, be entitled separately to sue a tenant under this Act, unless he is authorized to receive from such tenant the whole of the rent payable by such tenant; but nothing in this section shall affect any local custom or any special contract.

107. The plaint shall be presented by the plaintiff, or by an agent duly authorized on his behalf, who has personal knowledge of the facts of the case, or by an agent accompanied by a person who has such knowledge.

The plaint shall be subscribed and verified at the foot by the plaintiff or his agent in the manner following, or to the like effect:—

"I, A. B., the plaintiff named in the above plaint, do declare that what is stated therein is true to the best of my knowledge and belief."

If the plaint contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, he shall be punishable according to the law for the punishment of giving or fabricating false evidence.

108. If the plaintiff rely in support of his claim on any document in his possession, he shall deliver the same to the Court at the time of presenting his plaint.

Unless such document be so delivered, or its non-production be sufficiently excused, or unless the Court see fit to extend the time for producing the same, it shall not afterwards be admitted.

109. If the plaintiff require the production of any document in the possession or power of the defendant, he may, at the time of presenting his plaint, deliver to the Court a description of the document, in order that the defendant may be required to produce the same.

110. If the suit be for the recovery of an arrear of rent or revenue, or of a share of profits or village-expenses, or other dues under section 93, the plaintiff shall specify the name of the village and estate, and of the pargana or other local division in which the land is situate:

and, if the suit be for an arrear of rent alleged to be due from any tenant, the plaintiff shall also specify the quantity of land, and (where fields have been numbered in a Government-survey) the number of each field, and yearly rent of the land; the amount (if any) received on account of the year for which the claim is made; and in all cases coming under this section the plaintiff shall specify the amount in arrear, and the time in respect of which it is alleged to be due.

111. If the suit be for the ejection of a tenant from any land, the plaintiff shall describe (as circumstances may require) the extent, situation and designation of the land; and, if necessary for its identification, shall set forth its boundaries.

112. If the plaint do not contain the several particulars hereinbefore required to be specified therein, or be not subscribed and verified as hereinbefore required, the Court may, at its discretion, return it to the plaintiff, or allow it to be amended.

112A. The Court may, on or before the first hearing upon the application of either party, and on such terms as the Court thinks just, order that the name of any party, whether as plaintiff or as defendant, improperly joined, be struck out;

and the Court may at any time, either upon or without such application, and on such terms as the Court thinks just, order that any plaintiff be made a defendant, or that any defendant be made a plaintiff, and that the name of any person who ought to have been joined whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

No person shall be added as a plaintiff without his own consent thereto.

All parties whose names are so added as defendants shall be served with a summons in manner hereinafter mentioned, and the

Defendants added to be served. proceedings as against them shall be deemed to have begun only on the service of such summons:

Provided that, when a defendant dies and the suit is continued against his legal representative, it shall, as regards him, be deemed to have been instituted when it was instituted against the deceased defendant.

112B. Where a defendant is added, the plaintiff, if previously filed, shall, unless the Court directs otherwise, be amended in such manner as may be necessary, and an amended copy of the summons shall be served on the new defendant and the original defendants.

112C. All objections for want of parties, or for joinder of parties who have no interest in the suit, or for mis-joinder as co-plaintiffs or co-defendants, shall be taken at the earliest possible opportunity, and in all cases before the first hearing, and any such objection not so taken shall be deemed to have been waived by the defendant.

112D. If the plaint be admitted, the plaintiff shall present as many copies on plain paper of the plaint as there are defendants, unless the Court, by reason of the length of the plaint, or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief or remedy required in the suit, in which case he shall present such statements.

113. If the plaint be in proper form, the Court, except as otherwise herein-after specially provided, shall direct the issue of a summons to the defendant,

and if the plaintiff require the personal attendance of the defendant, and satisfy the Court that such attendance is necessary, or the Court of its own accord require such attendance, the summons shall contain an order for the defendant to appear personally on a day to be specified in the summons.

If the plaintiff or the Court does not require the personal attendance of the defendant, the summons shall order the defendant to appear either personally or by an agent duly authorized on his behalf, who has personal knowledge of the subject, or is accompanied by a person who has such personal knowledge.

114. The day to be specified in the summons shall be fixed with reference to the state of the file and the distance that the defendant may be or be supposed to be at the time from the place where the Court is held,

and the summons shall order the defendant to produce any document in his possession or power of which the plaintiff demands inspection, or upon which the defendant relies in support of his defence.

It shall also direct him to bring with him his witnesses, if they are willing to attend without issue of process,

and it shall be in the form (D) contained in the first schedule hereto annexed, or to the like effect.

It shall be accompanied with one of the copies or concise statements mentioned in section 112 D.

115. The summons shall be served by delivering a copy thereof to the defendant personally when practicable;

or, if the copy cannot be delivered to the defendant personally, by affixing copy of the summons to some conspicuous part of his usual residence, and also affixing a copy of the same in the Court.

116. If the summons be served by delivering a copy to the defendant personally, the Názir shall endorse on the summons the fact of such service.

If personal service be not effected, the Názir shall endorse on the summons the reason of not serving it personally, and how it has been served.

117. If the usual residence of the defendant be in another district, the summons shall be sent by the public post to the Collector of such district, who shall issue the summons, and return the same, after service, with the prescribed endorsement, to the officer by whom it was transmitted to him.

117A. If the defendant resides out of British India, and has no agent in British India empowered to accept the service, the summons shall be addressed to the defendant at the place where he is residing, and forwarded to him by post, if there be postal communication between such place and the place where the Court is situate.

117B. If there be a British Resident or Agent of Government in or for the territory in which the defendant resides, the summons may be sent to such Resident or Agent by post or otherwise for the purpose of being served upon the defendant; and if the Resident or Agent return the summons with an endorsement under his hand that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be conclusive evidence of such service.

118. The amount of the cost of serving the summons, or, if a warrant be issued as provided in the next following section, of serving the warrant,

shall in all cases be deposited in Court by the plaintiff within such time before the issue of such summons or warrant as is fixed by the Court issuing the process.

If the said amount be not so deposited (except where the Court in exercise of the discretion reserved to it in section 91 allows the summons to be served gratis), the case shall be struck out of the list of pending suits;

but in such case the plaintiff may present another plaint at any time within the period allowed by the rules herein contained for the limitation of suits.

119. (a) If in any suit against a tenant for the recovery of an arrear of rent, or in any suit for the recovery of an arrear of revenue, or a share of profits or village-expenses or other dues, the plaintiff desires a warrant of arrest to be issued against the defendant, such defendant being resident within the district in which the suit is instituted, the plaintiff shall present, with his plaint, an application for the issue of such warrant.

(b) When such application is presented, the Court shall examine the plaintiff or his agent, and inspect the documents adduced by him in support of his claim; and if *prima facie* it appear to the Court that the claim is well founded, and that, if a summons be issued, the defendant will abscond instead of appearing to answer the claim, the Court may issue a warrant for his arrest.

(c) The Court shall fix a reasonable time for the return of the warrant, and the officer entrusted with the service thereof shall, at the time of arresting the defendant, deliver to him one of the copies or concise statements mentioned in section 112D and a notice requiring him, if he contest the claim, to bring with him any document upon which he relies in support of his defence.

(d) Every warrant issued and notice delivered under this section shall be respectively in the forms (E) and (F) in the first schedule hereto annexed, or to the like effect.

120. If a defendant be arrested under the warrant of arrest, he shall be brought with all convenient speed before the Court.

121. When a defendant is brought before the Court under warrant, the Court shall, with all convenient speed, proceed to try the case in the manner hereinafter provided,

and if the suit cannot be at once adjudicated, the Court may, if it think fit, require the defendant to give security for his appearance whenever the same may be required at any time whilst the suit is pending, or until execution of the final decree which may be passed thereon,

and may commit him to the civil jail to be there detained until he furnishes such security or deposits such sum as the Court orders.

The security-bond shall be in the form (G) contained in the first schedule hereto annexed, or to the like effect.

122. If the defendant cannot be arrested under the warrant, the Court, on the application of the plaintiff, shall either postpone the case for such period as to it seems proper, in order that the plaintiff may apply within the said period for another warrant to be issued for the arrest of the defendant, or shall forthwith issue a proclamation, to be affixed in its own office and at the residence of the defendant, appointing a day for the hearing of the case, which shall not be less than ten days from the date of the publication of the notice, at the residence of the defendant.

If the defendant appear in pursuance of the proclamation, he shall be dealt with as provided in the last preceding section.

123. If it appear to the Court that the arrest of the defendant was applied for without reasonable cause, the Court may, in its decree, award to him such sum not exceeding one hundred rupees as it may deem a reasonable compensation for any injury or loss which he has sustained by reason of such arrest, or of his detention in jail during the pendency of the suit.

124. If on the day fixed by the summons or proclamation for the appearance of the defendant, or on any subsequent day to which the hearing of the case may be adjourned prior to the recording of an issue for trial as hereinafter provided, neither of the parties appear in person or by an agent, the case may be struck off, with liberty to the plaintiff to bring a fresh suit, unless precluded by the rules herein contained for the limitation of suits.

125. If on any such day only the defendant appears, the Court shall pass judgment against the plaintiff by default, unless the defendant admits the plaintiff's right to the relief which he claims, in which case the Court shall proceed to give judgment for the plaintiff upon such admission without costs:

Provided that such judgment, if there be more than one defendant, shall be only against the defendant who makes the admission.

126. If on any such day the plaintiff only appear, the Court, upon proof that the summons or proclamation has been duly served according to the provisions of this Act, shall proceed to examine the plaintiff or his agent, and after considering the allegations of the plaintiff, and any documentary or other evidence adduced by him, may either dismiss the case or postpone the hearing of it to a future day for the attendance of any witness the plaintiff may wish to call, or may pass judgment *ex parte* against the defendant.

127. If the defendant appear on any subsequent day to which the hearing of the suit is postponed under the last preceding section, the Court may, upon such conditions, if any, as to costs or otherwise as it thinks proper, allow the defendant to be heard in answer to the suit as if he had appeared on the day fixed for his attendance.

128. (a) No appeal shall lie from a judgment passed *ex parte* against a defendant who has not appeared, or from a judgment against a plaintiff by default for non-appearance.

(b) But in all such cases, if the party against whom judgment has been given appears, either in person or by agent, if a plaintiff, within fifteen days from the date of the Court's decree, and, if a defendant, within fifteen days after any process for enforcing the judgment has been executed, or at any earlier period, and shows sufficient cause for his previous non-appearance, and satisfies the Court that there has been a failure of justice, the Court may, upon such terms as to costs or otherwise as it thinks proper, revive the suit and alter or rescind the judgment according to the justice of the case.

(c) But no judgment shall be reversed or altered without previously summoning the adverse party to appear and be heard in support of it.

129. When both parties appear in person or by agent on the day named in the summons, or upon any subsequent day to which the hearing of the case may be adjourned, for sufficient reason to be recorded by the Court, the Court shall proceed to examine such of the parties as may be present, and either party or his agent may cross-examine the other party or his agent.

130. If either of the parties be not bound to attend personally, any agent by whom he appears, or any person accompanying such agent, may be examined and cross-examined in like manner as the party himself would have been if he had attended personally.

131. At the time of the examination, the defendant may file a written statement in his defence.

Such written statement shall be subscribed and verified in the manner hereinbefore provided for subscribing and verifying plaints, and if it contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, he shall be punishable according to the law for the punishment of giving or fabricating false evidence.

132. The examination of the parties or their agents, or such other persons as aforesaid, shall be according to the law for the time being in force relative to the examination of witnesses in the civil Courts.

The substance of the examination shall be reduced to writing in the mother-tongue of the presiding officer, and shall be filed with the record.

133. If either of the parties produce a witness on such day, the presiding officer may take the evidence of such witness.

134. If the defendant rely on any document in support of his defence, he shall deliver the same into Court at the first hearing of the suit:

Document relied on by defendant to be produced at first hearing. and unless such document be so delivered, or its non-production be sufficiently excused, or unless the presiding officer see fit to extend the time for delivering the same, it shall not afterwards be admitted.

135. If after the examination required by section 129, and also the examination of any witness who may attend to give evidence on behalf of either of the parties, and after a consideration of the documentary evidence adduced, a decree can be properly made without further evidence, the Court shall make its decree accordingly.

136. If on such examination as aforesaid either party is absent and his agent is unable to answer any material question relating to the case which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the case to a future day, and direct that the party whose agent was unable to answer as aforesaid shall attend in person on such day;

and if such party fails to appear in person on the day appointed, the Court may pass judgment as in case of default, or make such other order as it deems proper in the circumstances of the case.

137. If on such examination as aforesaid it appears that the parties are at issue on any question upon which it is necessary to hear further evidence, the Court shall declare and record such issue, and shall fix a convenient day for the examination of witnesses and the trial of the suit; and the trial shall take place on that day, unless there be sufficient reason for adjourning it, which reason shall be recorded by the Court.

138. The parties shall produce their witnesses on the day of trial, and if either party require assistance to procure the attendance of a witness on such day, either to give evidence or to produce a document, he shall apply to the Court in sufficient time before the day fixed for the trial, to enable the witness to be summoned to attend on that day; and the Court shall thereupon issue a summons requiring such witness to attend.

139. The law and rules for the time being in force relating to the attendance of witnesses, for procuring the attendance of witnesses and the production of documents, and for the examination, remuneration and punishment of witnesses, whether parties to the case or not, in cases before the civil Courts, shall, except so far as may be inconsistent with the provisions herein contained, apply to suits under this Act.

140. If on the day fixed for the trial of any issue neither of the parties appear, the case may be struck off, with liberty to the plaintiff to bring a fresh suit.

Case to be struck off if neither party appears. If on any such day one only of the parties appear, the issue may be tried and determined in the absence of the other party, upon such evidence as may be then before the Court.

141. When suits under this Act are instituted or defended by agents employed in the collection of rent or management of land, in the name and on the behalf of the landholders by whom they are so employed, all the provisions of this Act, by which the personal appearance or attendance of parties to a suit is or may be required, shall be applicable to such agents;

and anything which by this Act is required or permitted to be done by a party in person may be done by any such agent as aforesaid.

Processes served on any such agent shall be as effectual for all purposes in relation to the suit as if the same had been served on the landholder in person:

Processes served on such agents. and all the provisions of this Act relative to the service of processes on a party to the suit shall be applicable to the service of processes on such agent.

142. A female plaintiff or defendant shall not be required to attend in person, if she is of a rank or class which, according to the custom and manners of the country, would render it improper for her to appear in public.

143. Any party to a suit may employ an authorized agent to conduct the case on his behalf:

Parties may employ agents. but the employment of such agent shall not excuse the personal attendance of the plaintiff or defendant, in cases where his personal attendance is required by the summons, or any order of the Court;

Personal attendance when not excused. and no fee for any agent shall be charged as part of the costs of suit in any case under this Act, unless the Court certifies that, under the circumstances of the case, such fee is proper to be allowed.

144. The Court may in any case grant time to the plaintiff or defendant to proceed in the prosecution or defence of a suit,

Court may grant time or adjourn hearing. and may also, from time to time, in order to the production of further evidence, or for other sufficient reason to be recorded by the Court, adjourn the hearing of any case to such day as to it may seem fit.

145. The presiding officer may, at any stage of a case, cause a local enquiry and report respecting the matter in dispute to be made by any officer subordinate to him, or by any other officer of Government, with the consent of the authority to whom such officer is subordinate, or may himself proceed to the spot and make such local enquiry in person.

The provisions of the law for the time being in force relative to local inquiries by Amins or Commissioners, under orders of the civil Courts, shall apply to any local inquiry made by any officer under this section, and, so far as they are applicable, to inquiries made by the presiding officer of the Court in person.

In the latter case the presiding officer, after completing the inquiry, shall record such observations as appear to him appropriate, and the observations so recorded shall form part of the proceedings in the suit.

146. The defendant in any suit under this Act may pay into Court such sum of money as he thinks a full satisfaction for the demand of the plaintiff, together with the costs incurred by the plaintiff up to the time of such payment, and such sums shall be paid to the plaintiff.

If the defendant deposit less than the sum claimed and the plaintiff elect to proceed in the case, and ultimately recover no further sum than has been paid into Court, the plaintiff shall be charged with any costs incurred by the defendant in the suit after such payment.

147. No interest shall be allowed to a plaintiff on any sum paid by the defendant into the Court from the date of such payment, whether such sum be in full of the plaintiff's claim, or fall short thereof.

148. When, in any suit between a landholder and a tenant under this Act, the right to receive the rent of the land or tenure cultivated or held by the tenant is disputed on the ground that some third person has actually and in good faith received and enjoyed such rent before and up to the time when the right to sue accrued, such third person may be made a party to the suit, and the question of such receipt and enjoyment of the rent by such third person may be enquired into, and the suit shall be decided according to the result of such enquiry:

Provided that the decision of the Court shall not affect the right of either party entitled to the rent of such land to establish his title by suit in the civil Court, if instituted within one year from the date of the decision.

149. Whenever a decree is given for the ejectment of a tenant, or the cancelment of his lease, on account of any act or omission by which the land in his occupation has been damaged, or which is inconsistent with the purpose for which the land has been let, the Court may, if it think fit, allow him to repair such damage within one month from the date of the decree, or order him to pay such compensation, within such time, or make such other order in the case, as the Court thinks fit, and if such damage be so repaired, or compensation so paid, or order obeyed, the decree shall not be executed.

150. Every judgment under this Chapter shall be pronounced in open Court.

151. The judgment shall be written in the mother-tongue of the presiding officer, and shall contain the reasons for the same, and shall be dated and signed by the presiding officer at the time it is pronounced:

Provided that, where his mother-tongue is not English, the judgment may be written in English, if he is able to write a clear and intelligible decision in that language.

151A. The judgment shall direct by whom the costs of each party are to be paid, whether by himself or by any other party to the suit, and whether in whole or in what part or proportion.

151B. Except as hereinbefore provided, the Court shall have full power to give and apportion costs of every suit in any manner it thinks fit; and the fact that the Court has no jurisdiction to try the case is no bar to the exercise of such power; but if the Court directs that the costs of any suit shall not follow the event, the Court shall state its reasons in writing.

151C. The Court may direct that the costs payable to one party by another shall be set off against sums admitted or found in the suit to be due from the former to the latter.

151D. Except as hereinbefore provided, the Court may give interest at any rate not exceeding six per cent. per annum, on any sum decreed or found to be due, or on costs.

152. Every officer invested with powers under this Act may hold a Court for hearing and determining suits under this Act in any place within the limits of the district to which he is appointed.

Every hearing shall be in open Court, and the parties to the suit or their authorized agents shall have due notice to attend in such place.

CHAPTER VII.

PROCEDURE IN EXECUTION OF DECREES IN SUITS.

153. If the decree be for the ejectment of any tenant from land occupied by him, the decree shall be executed by giving the possession or occupancy of the land to the person entitled by the decree thereto.

If any opposition is made to the execution of the order for giving such possession or occupancy, by the party against whom the order is made, the Magistrate, on the application of the Collector of the District or Assistant Collector, shall give effect to the same.

154. If the decree be for the payment of arrears of rent or revenue, or of money, and the defendant has been committed to jail, or appear in Court pursuant to the conditions of any security-bond given under

section 121, the Collector of the District or Assistant Collector may order that he be detained in, or committed to, the civil jail, unless he immediately pays into Court the amount of the decree with costs, or otherwise complies with the terms of the decree.

155. If the judgment-debtor has given security for his appearance, and is not present when judgment is pronounced, and the surety fails to deliver him into custody when required so to do, process of execution may be taken out against the surety in the same manner as if a decree for the amount due by the debtor had been passed against the surety.

156. (a). A writ of execution may be issued against either the person or the property of a judgment-debtor;

but process shall not be issued simultaneously against both person and property.

(b). Such writ may be issued on the oral application of the judgment-creditor or his agent, made at the time the decree is passed, or, thereafter, upon the written application of the judgment-creditor or his agent.

(c). Writ of execution against the person or moveable property of a debtor shall be in the form (H) or (I) contained in the first schedule hereto annexed, or to the like effect.

157. Any moveable property required to be seized under an execution shall, if practicable, be described in a list to be furnished by the judgment-creditor;

but, if the creditor is unable to furnish such list, he may apply for a general attachment of the debtor's effects, to the amount of the judgment and costs.

In either case, the property to be seized shall be pointed out to the officer entrusted with execution of the process, by the creditor or his agent:

Provided that no implements of husbandry, or cattle actually employed in agriculture, or tools of artisans, or necessary wearing apparel of the judgment-debtor, his wife or children, shall be attached under this section.

158. Every writ of execution shall bear date on the day on which it is signed by the Collector of the District or Assistant Collector, and shall continue in force for such period as he may direct (not being more than sixty days) calculated from such date.

159. Second and successive writs of execution may be issued by order of the Collector of the District or Assistant Collector on the application of the judgment-creditor, after the expiration of the period fixed for the continuance in force of a previous warrant.

160. Process of execution shall not be issued upon any judgment, without previous notice to the party against whom execution is applied for, if, when appli-

cation for the issue of the process is made, a period of more than one year has elapsed from the date of the judgment, or from the date of the last previous application for execution.

161. Execution on a judgment shall not issue against the heir or other representative of a deceased party, unless notice to appear and be heard has been previously served on such heir or other representative.

162. No process of execution shall be issued on a judgment under this Act, when the application for the issue of such process is made after the lapse of three years from the date of such judgment, unless the judgment be for a sum exceeding five hundred rupees;

in which case the period within which execution may be had shall be regulated by the general rules in force in respect to the period allowed for the execution of decrees of the civil Court.

163. If a writ issues for taking any person in execution, the officer charged with the execution of the writ shall bring him with all convenient speed before the Collector of the District or Assistant Collector.

If such person does not then deposit in Court the full amount specified in the writ,

or make such arrangement for the payment of the same as is satisfactory to the judgment-creditor,

or satisfy the Collector of the District or Assistant Collector that he has no present means of paying the same amount,

the Collector of the District or Assistant Collector shall send him to the civil jail, there to remain for such time as may be directed by a warrant addressed to the keeper of the jail, unless in the meanwhile he pays the full amount for the payment of which he is liable under the decree:

Provided that the time for which a debtor may be confined in execution of a decree under this Act shall not exceed three months when the amount decreed (exclusive of costs) does not exceed fifty rupees, or six months when such amount does not exceed five hundred rupees, or two years in any other case.

164. (a.) Any person once discharged from jail shall not be imprisoned a second time under the same judgment.

(b.) If the amount due under the decree does not exceed one hundred rupees, the Collector of the District or Assistant Collector may declare him absolved from further liability under that decree, and such liability shall thereupon be extinguished.

(c.) In other cases the discharge shall not extinguish the liability of the discharged person under the decree, or exempt any property belonging to him from attachment in execution of the same.

165. Every person applying for the issue of a warrant of arrest under section 119, or suing out process of execution against the person of any judgment-debtor, shall deposit in Court, when the warrant issues, diet-money for thirty days at such rate not exceeding two annas per diem, as the Collector of the District or Assistant Collector may direct, unless for any special reason he directs that deposit be made at a higher rate, which shall not exceed four annas per diem.

166. Payment of diet-money at the same rate shall be made previously to the commencement of each succeeding month of the imprisonment, on failure of which the party confined shall be discharged.

167. All diet-money spent in providing subsistence for any prisoner shall be added to the costs in the suit.

and any diet-money not so spent shall be returned to the person who deposited the same.

168. In executing a writ of execution against the moveable property of a debtor liable under this Act, the officer charged with the execution of the writ shall prepare a list of the property pointed out by the judgment-creditor, and shall publish a proclamation, specifying the day upon which the sale is intended to be held, together with a copy of the said list, at the intended place of sale and at the residence of the debtor.

A copy of the said proclamation and list shall be sent to the Collector of the District or Assistant Collector, and shall be affixed in his office.

169. No moveable property taken in execution under this Act shall be sold before the expiration of ten days next after the day on which such property is so taken.

Until such sale the property shall be deposited in some fit place, or it may remain in custody of some fit person approved by the officer executing the writ.

The provisions of sections 74 to 78 (both inclusive), so far as the same are applicable, shall apply to sales under this section.

170. No irregularity in publishing or conducting a sale of any moveable property under an execution shall vitiate such sale.

But any person injured by such irregularity may recover compensation for such injury by suit in the civil Court:

Provided that such suit be brought within one year from the date of sale.

171. In the execution of any decree for the payment of arrears of rent or revenue, or of money, under this Act, if satisfaction of the judgment cannot be obtained by execution against

the person or moveable property of the debtor, the judgment-creditor may apply for execution against any immoveable property belonging to such debtor, except the materials of buildings actually occupied by a debtor who is an agriculturist.

172. If the immoveable property against which execution is applied for be other than a mahál, or share of a mahál, process shall be issued in the same manner as for the attachment and sale of moveable property: and the provisions of sections 168, 169 and 170 shall be applicable.

In the event of the sale of such property being completed, possession thereof shall be given to the auction-purchaser by the Collector of the district in which such property is situate.

173. When such property is a mahál, or a share of a mahál, the decree shall be sent for execution to the Collector of the District in which such property is situate,

and if the judgment-debtor satisfies the Collector of the District that there is reasonable ground to believe that the amount of the judgment-debt may be raised by mortgage of the property, or by letting it on lease, or by disposing by private sale of a portion of the property or any other property belonging to the judgment-debtor, the Collector of the District may, on the application of the judgment-debtor, postpone the sale for such period as the Collector of the District thinks proper to enable the judgment-debtor to raise the amount,

and if the judgment-debtor satisfies his creditor, the execution shall be stayed, and the Collector of the District shall report the fact to the Court by which the decree was made.

174. If the judgment-debtor obtaining a postponement of the sale fails to satisfy his creditor within the period so fixed, or, if the judgment-debtor does not apply for, or applies for but

does not obtain, a postponement of the sale, and the Collector of the District considers that the sale of the mahál or share is inexpedient, and that satisfaction of the decree may be made by means of a temporary alienation of the property,

the Collector of the District shall cause an accurate rent-roll of the property to be prepared, and ascertain the annual income derivable therefrom.

If, in the opinion of the Collector of the District, such income is sufficient to pay off the judgment-debt with interest at

six per cent. per annum, within any period not exceeding fifteen years from the date of the decree, he may transfer the property to the judgment-creditor, or if the judgment-creditor refuse to

take it, to some other person, or he may hold it under his own management, for such period not exceeding fifteen years, as may be sufficient for the recovery of the debt with interest as aforesaid, and on such conditions as to the payment of such debt and interest as he deems expedient.

Orders passed under this section and section 173 shall be subject to revision by the Commissioner of the Division and the Board, but shall not be open to appeal to the civil Court.

174A. When the property of a judgment-debtor which is transferred or held under management under section 174 includes any sir-land of such debtor, he shall, until such property is restored to him, be treated as an ex-proprietary tenant of such sir-land under section 7.

175. If in the opinion of the Collector of the District the recovery of the debt under section 174 is impossible, or if the sale of the property appear to him advisable on other grounds, he shall report, through the Commissioner of the Division, the case for orders to the Board.

176. On the receipt of such report, the Board may make, or cause to be made, such further endeavours for the recovery of the debt under the provisions of section 174, as to it may seem practicable.

177. If it appear to the Board that the debt cannot be recovered under section 174, or if the sale of the property appear to it advisable on other grounds, it shall order the property to be sold, in which case the sale shall be made under the rules in force for the sale of land for arrears of land-revenue, but without prejudice to the incumbrances (if any) to which such property may be subject.

178. If, before the day fixed for any sale of any property under this Act, a third party appear before the Collector of the District or Assistant Collector, and claim a right or interest to or in any of the property, he shall examine such party or his agent, according to the law for the time being in force relative to the examination of witnesses,

and, if he see sufficient reason for so doing, may stay the sale of such property.

179. The Collector of the District or Assistant Collector may adjudicate upon such claim, and make such order as he thinks fit between the claimant and the plaintiff and defendant in the original suit.

In trying such claim, the Collector of the District or Assistant Collector shall be guided by the rules contained in this Act, so far as they may be applicable.

180. If the claimant fail to establish his right to the property taken in execution, the Collector of the District or Assistant Collector may, at the time of disposing of the case, order him to pay to the judgment-creditor the costs of the proceedings on the claim, and also such sum as the Collector or Assistant Collector thinks sufficient to cover any loss of interest or damage which the judgment-creditor may have sustained by reason of the postponement of the sale of the property.

181. (a.) No appeal shall lie from any order passed under section 179 or section 180 by the Collector of the District.

(b.) But the party against whom the same is passed may institute a suit in the civil Court to establish his right at any time within one year from the date of the order:

(c.) Provided that, if the order be for the sale of the property taken in execution, and the property is moveable the suit shall not be for the recovery of such property, but shall be for compensation from the judgment-creditor by whom it was brought to sale.

CHAPTER VIII.

APPEAL, REHEARING AND REVIEW.

(A).—From Decrees in Suits.

182. In suits under this Act, tried and decided by a Collector of a District or an Assistant Collector of the first class, his judgment shall be final.

183. All decisions of the Assistant Collector of the second class in suits mentioned in section 93 shall be appealable to the Collector of the District, whose order thereon shall be final.

184. The petition of appeal shall be presented to the Collector of the District within thirty days from the date of the decree.

185. The Collector of the District may either dismiss the petition or may fix a day for hearing the appeal, and in that case he shall cause notice of the same to be served on the respondent in the manner hereinbefore prescribed for the service of summons.

If, on the day fixed for hearing the appeal, or any other day to which the hearing may be adjourned, the appellant does not appear in person or by an agent, the appeal may be dismissed for default.

If the appellant appears and the respondent does not appear in person or by an agent, the appeal may be heard *ex parte*.

186. If an appeal be dismissed for default of prosecution, the appellant may, within fifteen days from the date of the dismissal, apply to the Collector of the District to re-admit the appeal,

and if it be proved to the satisfaction of the Collector of the District that the appellant was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the Collector of the District may re-admit the appeal.

187. After hearing the appeal, the Collector of the District shall give judgment in the manner hereinbefore prescribed for giving judgment in original suits.

188. In suits in which the judgment of the Rehearing of suits Collector of the District or not open to appeal. Assistant Collector is final, as provided in section 182, he may, upon the application of either party, if preferred within thirty days from the date of the decision, order the rehearing of a suit, upon the ground of the discovery of new evidence or matter material to the issue of the case, which the applicant had no knowledge of, or could not produce, at the time of trial.

189. Notwithstanding anything contained, in Appeal to District sections 182 and 183 an Judge. appeal shall lie to the District Judge from the decision of the Collector of the District or Assistant Collector of the first class, in all suits mentioned in section 93,

in which the amount or value of the subject-matter exceeds one hundred rupees, or

in which the proprietary title to land has been determined between parties making conflicting claims thereto :

Provided that, where the amount or value of the subject-matter of the suits exceeds five thousand rupees, the appeal shall lie to the High Court.

190. The rules for the time being in force in Rules as to time of regard to the time within presentation, &c., to which appeals from the decisions of civil Courts may be received, and to the manner in which such appeals are heard and determined, and to all proceedings which may be had in respect of such appeals, shall be applicable to appeals to the District Judge or High Court under this Act.

191. The decisions of District Judges passed in Special appeal to High regular appeal under this Court from District Act shall be open to special Judge. appeal to the High Court, in the same manner, and subject to the same rules, as the decisions of District Judges passed in regular appeal are open to special appeal under the Code of Civil Procedure and the Indian Limitation Act, 1877.

(B).—From Orders on Applications or relating to the Execution of Decrees.

(1) Assistant Collectors of the Second Class.

192. An appeal to the Collector of the District Appeal from Assistant shall lie from all orders Collector of second class. passed under this Act by an Assistant Collector of the second class.

(2) Assistant Collectors of the First Class.

193. An appeal to the Commissioner of the Division shall lie from all Appeal from orders of Assistant Collectors of first class on certain applications. orders passed by an Assistant Collector of the first class,

(a) on applications under section 99, where the amount or value of the subject-matter exceeds one hundred rupees,

(b) on applications under section 100.

194. An appeal to the Collector of the District Appeal from other shall lie from all other orders orders of Assistant Collector of first class. passed under this Act by an Assistant Collector of the first class, except—

(a) orders on applications mentioned in section 98;

(b) orders on applications mentioned in section 99;

(c) orders passed in the course of a suit and relating to the trial thereof.

195. The orders of an Assistant Collector of the Final orders of Assist- first class on the following orders of Collector of first applications shall be final, class. subject to revision by the Commissioner of the Division or the Board—

(a) applications mentioned in section 98;

(b) applications mentioned in section 99 where the amount or value of the subject-matter does not exceed one hundred rupees.

(3) Collector of the District.

196. An appeal to the Commissioner of the Division shall lie from orders Appeal from certain orders of Collector of passed by the Collector of the District, the District,

(a) under section 99, when the amount or value of the subject-matter exceeds one hundred rupees,

(b) under section 100.

In all other cases orders under this Act passed by the Collector of the District shall be final, subject to revision by the Commissioner of the Division or the Board.

(4) Commissioner of the Division.

197. Save as provided by section 198, the orders Finality of orders of of the Commissioner of the Commissioner of Divi- Division on appeals shall be sion. final, subject to revision by the Board.

198. An appeal from the decisions of the Commissioner of Division on appeals Appeal to Board from his decisions on appeals against orders on applications mentioned in section 100. shall lie to the Board, except where the Commissioner of the Division dismisses the appeal.

In such case the provisions of section 199 shall apply.

199. The Board may at any time call for any Power of Board to case (other than a suit men- call for cases and pass tioned in section 189) which orders thereon. has come before any Commissioner of a Division, or any Court subordinate to him, and pass such orders thereon, consistent with this Act, as the Board thinks fit.

200. No appeal shall be brought to the Collector Time for appealing. of the District after the expiration of thirty days, or to the Commissioner of the Division after the expiration of sixty days, or to the Board of Revenue after ninety days, from the date of the order complained of.

201. Any appeal under this Act may be admit- Admission of appeals ted after the period of limit- after prescribed period. ation prescribed therefor when the appellant satisfies the officer to whom he appeals that he had sufficient cause for not presenting the appeal within such period.

No appeal shall lie against an order under this section admitting an appeal.

(5) *Review.*

201A. The Board may review and may rescind, alter or confirm any order made by itself, or by a single member, on the application of one of the parties to the case, if preferred within ninety days from the passing of the order.

201B. In the case of any application in which the order of the Commissioner, Collector of the District or Assistant Collector is final, as provided in sections 195, 196 and 197, such Commissioner, Collector or Assistant Collector, as the case may be, may, upon the petition of either party, if presented within thirty days from the date of the decision, review his order upon the ground of the discovery of new evidence or matter material to the issue of the case which the applicant had no knowledge of or could not produce at the time of trial.

CHAPTER IX.

MISCELLANEOUS.

202. In computing the period of limitation prescribed for any suit under this Act, the day on which the right to sue accrued shall be excluded.

In computing the period of limitation prescribed for any appeal under this Act, the day on which the judgment or order complained of was pronounced, and the time requisite for obtaining a copy of the decree or order appealed against, shall be excluded.

203. Whenever a Court is closed on the last day of any period provided in this Act for the presentation of any memorandum of appeal, or for the deposit or payment of any money in or into court, the day on which the Court re-opens shall be deemed to be such last day.

204. (a.) If in any suit instituted, or on any application made, under this Act, it appears to the presiding officer that any question in issue involving a point of law is more proper for the decision of a civil Court, such officer, if a Collector of a District, or the Collector of the District on the representation of such officer, may cause a case to be stated for the opinion of the District Judge, who shall hear the case in such manner as nearly as may be as is prescribed for the hearing of cases by the High Court by section 619 of the Code of Civil Procedure.

(b.) If the District Judge finds that the case is insufficiently stated, he may return it to the Collector of the District for amendment.

(c.) Subject to any limits of value or time provided by law for cases falling under the Code of Civil Procedure, an appeal shall lie from the judgment of the District Judge to the High Court.

(d.) The District Judge shall return the case with the opinion of the civil Court to the Collector of the District, and the revenue Courts shall decide the suit or application in accordance with such opinion.

(e.) The costs attending such case shall be dealt with as costs in the suit or on the application in the revenue Court.

205. (a.) If in any suit instituted, or on any appeal presented, in a civil or revenue Court, the Judge or presiding officer doubts whether he is precluded by this Act from taking cognizance of the suit or appeal, he may refer the matter to the High Court.

(b.) On any such reference being made, the High Court may order the Judge or presiding officer, either to proceed with the case, or to return the plaint or appeal for presentation in such other Court as it may in its order declare to be competent to take cognizance of the suit or appeal.

(c.) The order of the High Court on any such reference shall be final, and shall not be questioned by the same parties in the same suit.

206. In all suits instituted in any civil or revenue Court, in which an appeal lies to the District Judge or High Court, an objection that the suit was instituted in the wrong Court shall not be entertained by the appellate Court, unless such objection was taken in the Court of first instance; but the appellate Court shall dispose of the appeal as if the suit had been instituted in the right Court.

207. If in any such suit such objection was taken in the Court of first instance, but the appellate Court has before it all the materials necessary for the determination of the suit, it shall dispose of the appeal as if the suit had been instituted in the right Court.

208. If in any such suit the appellate Court has not before it the materials necessary for the determination of the suit, it shall proceed under the provisions of the Code of Civil Procedure relating to appeals; but if it remands the suit, or frames and refers issues for trial, or requires additional evidence to be taken by the Court of first instance, it may direct its order either to the Court in which the suit was instituted, or to any other Court competent to entertain the suit,

and the objection that the order of a subordinate appellate Court has been directed to a Court which was not competent to entertain the suit shall not be taken on special appeal.

208A. If, in any suit or application pending before a Revenue Court exercising original appellate or revisional jurisdiction under this Act, it appears to such Court that any question in issue is more proper for decision by a civil Court, such Revenue Court may, by order in writing, require any party to such suit or application to institute, within such time as it may appoint in this behalf, a suit in the civil Court with a view to obtaining a decision of such question; and, if he fails to comply with such requisition, shall decide such question against him.

If he institutes such suit, the Revenue Court shall dispose of the suit or application pending before it in accordance with the final decision of the civil Court of first instance or appeal (as the case may be) upon such question.

209. In any suit brought by a co-sharer against a lambardár for a share of the profits, the Court may award to the plaintiff not only a share of the profits actually collected, but also a sum equal to the plaintiff's share in the profits which, through gross negligence or misconduct, the lambardár has omitted to collect.

210. In any application made by a tenant against a landholder to re-plead persons claiming cover possession of a holding, through landholder, the plaintiff may join as a defendant any other person in possession of the holding, who may claim title through the landholder.

In any suit instituted, or application made, by a landholder to eject a tenant the plaintiff may join as a defendant any other person in possession of the holding, who may claim title through the tenant.

211. The Local Government may from time to time make rules consistent with this Act—

(a) for the guidance of officers in determining, under sections 13, 14, 15, 17, 18 and 20, the rent payable by tenants,

(b) for the guidance of officers assessing rent under section 20,

(c) as to the dates on which instalments of rent shall fall due,

(d) as to the procedure to be followed on all applications under section 95.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

The Board, with the previous sanction of the Local Government, may from time to time make rules, consistent with the provisions herein contained, for the guidance of all persons in matters connected with the enforcement of this Act.

212. When the Local Government has made a rule fixing the date on which any instalment of rent shall fall due, no such instalment shall, for the purposes of this Act, be deemed to be in arrear unless it remains unpaid after the date fixed by such rule.

THE FIRST SCHEDULE.

FORM A. (See Section 51.)

I, A. B., of _____, solemnly declare that I did personally [or by my agent C. D.], on the _____ day of _____, tender payment to E. F. of the sum of Rs. _____ as and for the whole amount due from me on account of rent from the month of _____ to the month of _____ both inclusive. I further declare that the said E. F. refused to accept the sum so tendered, and to give a receipt in full for the

same, and I declare that, to the best of my belief, the sum of rupees _____ so tendered, and which I now desire to pay into Court, is the full amount I owe the said E. F., and I hereby apply for leave to pay the same accordingly.

FORM B. (See Section 52.)

Court of the Collector of _____, dated the _____ day of _____ To E. F. &c.

WITH reference to the written declaration of A. B., you are hereby informed that the sum of rupees _____ therein mentioned is now in deposit in this Court, and that the above sum will be paid to you, or to your duly authorized agent, on application.

[This is to be written on a copy of the declaration in Form A made by the person paying the money into Court.]

FORM C. (See Section 69.)

FORM OF NOTICE TO OWNER OF DISTRAINED PROPERTY.

Office of _____ Commissioner for sale of distrained property.

A. B., Distraîner.

[Name, description and address of the owner of the property.]

WHEREAS the said A. B. has applied to have the distrained property specified below sold for the recovery of _____ alleged to be due to him as arrears of rent, you are hereby required, either to pay the said sum to the said A. B., or to institute a suit before the Collector to contest the demand within fifteen days from the receipt of this notice, failing which the property will be sold.

Dated this _____ day of _____ 188 _____.

FORM D. (See Section 114.)

FORM OF SUMMONS TO DEFENDANT.

No. _____ (of suit) dated _____

In the Court of _____

A. B., Plaintiff.

[Name, description and address of plaintiff.]

C. D., Defendant.

[Name, description and address of Defendant.]

WHEREAS the said A. B. has brought a claim against you in this Court for _____ you are hereby required to appear in person in this Court on the _____ day of _____ [if not specially required to appear in person, state, "in person, or by an agent who has personal knowledge of the subject or who shall be accompanied by a person who has such knowledge"] to answer the above-named plaintiff, and you will bring with you (or send by your agent) [here mention any document the production of which may be required by the plaintiff] which the plaintiff desires to inspect, and all documents on which you may intend to rely in support of your

defence. You will also bring with you your witnesses, if they are willing to attend without issue of process.

FORM E. (See section 119.)

FORM OF WARRANT OF ARREST.

No. (of suit) dated

In the Court of

A. B., Plaintiff.

C. D., Defendant.

To the Názir of the Court of the Collector of

WHEREAS the plaintiff in this suit has obtained an order from the Court for the arrest of the defendant, you are hereby commanded to bring the defendant before the Court on or before the day of to be dealt with according to law.

Dated this day of 188 .

FORM F. (See section 119.)

FORM OF NOTICE TO ACCOMPANY SUCH WARRANT.

In the Court of

A. B., Plaintiff.

[Name, description and address of plaintiff.]

C. D., Defendant.

[Name, description and address of defendant.]

WHEREAS the said A. B. has brought a claim against you in this Court for (here specify particulars of claim as given in the plaint) and has obtained a warrant for your arrest, you are hereby required, unless you admit the claim, to bring with you to the Court all documents on which you may intend to rely in support of your defence.

FORM G. (See section 121.)

FORM OF SECURITY-BOND FOR APPEARANCE OF DEFENDANT.

WHEREAS A. B., plaintiff, has instituted a suit in the Court of the Collector of against C. D., defendant, and the said C. D. has been required to give security for his appearance at any time when called on while the suit is pending and until execution of the decree, I, E. F., hereby declare myself surety for the said C. D.'s appearance as aforesaid, and in case of his making default in such appearance, I engage to pay any sum for the payment of which the said C. D. may be liable under the decree. If the suit be for the delivery of papers or accounts, specify some sum to be fixed by the Collector.

FORM H. (See section 156.)

WRIT OF EXECUTION AGAINST THE PERSON.

A. B., Plaintiff.

C. D., Defendant.

To the Názir of the Court of the Collector of

WHEREAS the said C. D. was directed by a decree of this Court, under date the day of 188 , to pay to A. B. the sum of and for costs of suit, amounting to , and whereas the said C. D. has omitted to pay the same, you are hereby commanded to apprehend the said C. D., and to bring him with all convenient speed before this Court to be dealt with according to law.

FORM I. (See section 156.)

WRIT OF EXECUTION AGAINST THE EFFECTS.

A. B., Plaintiff.

C. D., Defendant.

To the Názir of the Court of the Collector of

WHEREAS C. D. was directed by a decree of this Court, under date the day of 188 , to pay to A. B. the sum of and for costs of suit, amounting to , and whereas the said C. D. has omitted to pay the same, you are hereby commanded to levy the said sum of , and the sum of for costs of executing this process, by seizure and sale of such moveable property of the said C. D. as (is described in the list annexed and) [if no list is furnished, these words to be omitted] shall be pointed out to you by the judgment-creditor or his agent; and you are hereby ordered to sell such property of the said C. D., on some convenient day, not being less than ten nor more than fifteen days from the day of seizure, unless the amount leviable as aforesaid shall be sooner paid; and you are hereby commanded to certify to me what you shall do by virtue of this warrant.

THE SECOND SCHEDULE.

(See section 1.)

TERRITORIES EXEMPTED, IN THE FIRST INSTANCE, FROM THE OPERATION OF THE ACT.

- I. The province of Kumaon and Garhwál.
- II. The Tarai Parganas, comprising—Bázipúr, Káshípúr, Jaspúr, Rudarpúr, Gadarpúr, Kilpúri, Nának-Mattha, and Bilheri.
- III. The portion of the Mirzápúr District lying to the South of the Kaimor Range.
- IV. The Family Domains of the Maharájá of Benares comprising the following parganas :—
Bhadohi and Kera Mangror in the Mirzapur District,
Kaswár Rájá in the Benares District.
- V. The tract of country known as Jaunsar Báwar in the Dehra Dún District.

D. FITZPATRICK,

Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 11th March, 1881, and is hereby promulgated for general information :—

ACT No. XIII OF 1881.

An Act to provide for the better government of Fort William.

WHEREAS it is expedient to give power to make rules for the better government of Fort William in Bengal and to provide for the establishment of a Court within the said Fort for the trial of persons charged with breaches of such rules ; It is hereby enacted as follows :—

Short title. 1. This Act may be called
"The Fort William Act,
1881 ;"

Commencement. and it shall come into
force on the first day of
April, 1881.

But nothing herein contained shall be deemed to confer jurisdiction over any persons (other than artificers, labourers, sutlers and followers) to whom the Army Discipline and Regulation Act, 1879, or the Indian Articles of War, 1869, is or are applicable.

2. The Governor General in Council may, from time to time, by notification in the *Gazette of India*, define, for the purposes of this Act, the limits of Fort William in Bengal ; and in this Act the expression "the Fort" means the area so defined.

3. The Commander-in-Chief in India may, from time to time, with the sanction of the Governor General in Council, make rules, to be in force within the Fort, in regard to the matters specified in the schedule hereto annexed, and other matters of a like nature, and may by such rules prescribe, as penalties for the infringement thereof, fine which may extend to fifty rupees, or imprisonment for a term which may extend to four days, or both.

When a sentence of fine is passed under any such rule, the term for which the Court directs the offender to be imprisoned in default of payment of such fine may extend to, and shall not exceed, four days.

When any rule is made under this section, a copy thereof, in English and such other languages

as the Governor General in Council may from time to time direct, shall be exhibited in such conspicuous places within the Fort as the officer commanding the Fort may from time to time direct.

4. The Governor General in Council may invest any commissioned officer in Her Majesty's Army with power to try persons charged with any infringement of the rules made under section three.

The officer so invested is hereinafter called the Fort Magistrate.

5. In all cases under this Act, the Fort Magistrate shall, except as herein otherwise provided, exercise within the Fort the powers, and, as nearly as may be, follow the procedure, conferred on, and prescribed for, a Presidency Magistrate by the Presidency Magistrates Act, 1877 ; and, subject to the power conferred by the High Courts Criminal Procedure Act, 1875, section 147, every finding, sentence or order of such Magistrate under this Act shall be final.

6. Any Police-officer, or any other person empowered in this behalf by the Governor General in Council, by name or as a member of a specified class, may arrest without warrant any person who in his sight commits an offence punishable under this Act.

Every person so arrested shall be taken to the police-station within the Fort, and shall be detained there until he gives to the Police-officer in charge of such station a bond, with or without sureties, as such officer may require, for a sum not exceeding one hundred rupees, to appear before the Fort Magistrate at a time to be specified in such bond, or until he can be brought before such Magistrate.

7. Nothing in this Act or in any rule made hereunder shall affect the jurisdiction of the Magistrates appointed under the Presidency Magistrates Act, 1877, or shall prevent any person from being prosecuted under any other law for any offence punishable under this Act, or from being liable to any other punishment than is provided for such offence by this Act : Provided that no person shall be punished twice for the same offence.

8. No prosecution for any offence under this Act shall be commenced after the expiration of three months next after such offence has been committed.

9. All penalties heretofore imposed by the Garrison Quarter Master of the Fort for offences against garrison rules and regulations shall be deemed to have been imposed in accordance with law.

THE SCHEDULE.

(See section 3.)

- (1). Throwing dirt or rubbish of any description into the drains or roads or anywhere but in the appointed places.
- (2). Removing night-soil without a covering or at unauthorized hours.
- (3). Camp-followers, servants and others not keeping the godowns they live in clean.
- (4). Performing offices of nature in other than the appointed places.
- (5). Bathing, or washing clothes or animals, in the cunette or other unauthorized places.
- (6). Selling unwholesome articles of food, grain or drinks.
- (7). Adulterating food or drinks.
- (8). Making evacuations in unauthorized places.
- (9). Rash or negligent driving.
- (10). Picketing, training or breaking in animals.
- (11). Causing obstruction by vehicles on the road.
- (12). Exposing or hawking articles for sale about the roads and barracks, or within the Fort, without a Fort pass.
- (13). Beating drums or tom-toms.
- (14). Damaging lamps, posts, masonry or other Government-property in any part of the Fort.
- (15). Disorderly behaviour in the public thoroughfares.
- (16). Gambling.
- (17). Spitting pán on any of the public staircases, gateways, walls and verandahs, or defacing in any way the walls of barracks, buildings or gateways.
- (18). Throwing slops into the drains.
- (19). Washing cooking-pots at the water-taps and wasting water.
- (20). Cooking in unauthorized places.
- (21). Hanging clothes to dry on the guns or masonry-work.
- (22). Laying out clothes, accoutrements or stable-bedding after the authorized hours.
- (23). Destroying the trees, bushes or plants, or climbing trees.
- (24). Servants smoking hookahs in their masters' quarters or cook-houses, or keeping such quarters or cook-houses in an insanitary state.
- (25). Trespassing on parade-grounds, or making footpaths across the grass-plots.
- (26). Being drunk and incapable.
- (27). Fighting, quarrelling and creating a disturbance, or making unnecessary noise of any kind.
- (28). Affixing bills and papers on any walls in the Fort.
- (29). Cutting grass or interfering with the grass-contractor.
- (30). Declining to show a tin pass when called upon to do so.
- (31). Being found in the garrison without a tin pass, or being in possession of a ticket belonging to another.
- (32). Driving vehicles without lights or with insufficiently greased wheels.
- (33). Swinging or sitting on the chain-fences.
- (34). Interfering in any way with the guns, carriages or piles of shot and shell on the works, or with the packed ordnance.
- (35). Mounting the ramparts or parapets or entering the embrasures without authority.
- (36). Smuggling liquor into the Fort.
- (37). Burning stable-litter or lighting fires except in authorized places and at authorized hours.
- (38). Carrying lights except in closed lanterns, or letting off fireworks.
- (39). Removing property of any kind or description from the Fort without written authority.
- (40). Allowing animals of any sort to stray into the Fort, or to graze within the same.
- (41). Slaughtering animals or exposing carcasses or offal within the Fort.
- (42). Keeping dogs or poultry in unauthorized places.
- (43). Buying, selling or receiving any portion of a soldier's kit.
- (44). Disobedience of lawful authority in failing to attend to authorized instructions of the police or of the several sentries posted throughout the Fort.
- (45). Occupying buildings of any kind without proper allotment.

D. FITZPATRICK,

Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 11th March, 1881, and is hereby promulgated for general information:—

ACT No. XIV OF 1881.

An Act to amend Bengal Regulation VII of 1828.

WHEREAS it is expedient to amend Bengal Regulation VII of 1828 (for amending the Provisions of Regulation XV of 1795, and for defining the Authority of the Rajah of Benares in the Maháls therein referred to) in manner hereinafter appearing; It is hereby enacted as follows:—

1. This Act may be called "The Benares Family Domains Act, 1881":
 Short title. And it shall come into force on such day as the Lieutenant-Governor of the North-Western Provinces may, by notification in the official Gazette, appoint in this behalf.

2. The following portions of Bengal Regulation VII of 1828 shall be repealed, namely:—
 Repeal of certain portions of Bengal Regulation VII of 1828.

(a) in section 5, the words and figures "under the rules contained in Regulation XLI, 1795";

(b) in section 14, the words "under the Regulations," in both places in which they occur;

(c) in section 19, the words "before the Court of circuit";

(d) in section 20, the proviso.

New section substituted for section 3 of same Regulation.

3. In the same Regulation, for section 3, the following shall be substituted, namely:—

"3. The superintendence of the said maháls shall be vested in the Commissioner of the Benares Division, hereinafter called 'the Superintendent.'"

"The Lieutenant-Governor of the North-Western Provinces may, from time to time, appoint a Deputy Superintendent of the said maháls, and confer upon him all or any of the powers of the Superintendent, to be exercised by him subject to the general control of the Superintendent."

4. In the same Regulation, section 7, for the last twenty-two words, the following shall be substituted, namely:—

"The orders thus passed by the Superintendent shall be subject to appeal to, and revision by, the Board of Revenue, whose order thereon shall be final, unless altered or set aside by the said Lieutenant-Governor."

5. In the same Regulation, section 9, for the words "the Regulations at present in force within the Province of Benares" the words "the enactments for the time being in force in the North-Western Provinces" shall be substituted, and after the word "applicable" the words "and the Local Government with the concurrence of the Maharájá may direct" shall be inserted.

6. To section 10 of the same Regulation the following clause shall be added, namely:—

"The Maharájá may delegate to one or more of his officers the exercise of all or any of the powers vested in him under this section in the whole or any part of the said maháls."

7. In the same Regulation, section 11, for the words and figures "Regulation XI, 1822," the words "the enactments for the time being in force in the North-Western Provinces" shall be substituted.

8. In the same Regulation, section 12, for the words "Boards of Revenue" the words "Commissioners of Divisions and the Board of Revenue" shall be substituted; and, for the words "towards the Board" the words "towards the Commissioner" shall be substituted.

9. In the same Regulation, section 13, for the words "Governor General in Council" the words "Board of Revenue" shall be substituted.

10. In the same Regulation, section 16, for the words "a Native Commissioner shall be maintained by the Rajah in each of the pergunnahs referred to in Regulation XV, 1795," the following shall be substituted, namely:—"A Native Commissioner, or two or three Native Commissioners, as the said Lieutenant-Governor may, from time to time, direct, shall be maintained by the Maharájá."

And to the same section the following shall be added, namely :—

“The local limits of the jurisdiction of the Native Commissioners shall be determined by the Mahārājā, and may be altered by him from time to time.”

11. In the same Regulation, section 21, for the Amendment of same words and figures “contained Regulation, section 21. in Regulation XXIII of 1814” to the end of the section, the following shall be substituted, namely :—“prescribed by the said Lieutenant-Governor under section 22 of this Regulation.”

12. For sections 22 to 26, both inclusive, of the Sections substituted same Regulation, the following sections shall be substituted, that is to say :—

“22. The said Lieutenant-Governor may, from time to time, make rules consistent with this Regulation—
Power to make rules.

“(a) to regulate the procedure and powers of the Native Commissioners, and to determine the cases in which, the mode in which, and the authority to or by which, the orders and decisions of such Commissioners shall be subject to appeal or revision, and

“(b) to regulate, in matters not hereinbefore provided for, the administration of the Family Domains in so far as it is entrusted to the Mahārājā ;

“such rules shall, when published in the local Gazette, have the force of law :

“Provided that no such rule shall be so published until the opinion of the Mahārājā thereon has been taken and considered by the Lieutenant-Governor.

“In matters not otherwise provided for by the rules made under clause (a), the Code of Civil Procedure shall apply.

“23. If, in any suit instituted or appeal presented under this Regulation in any Court, the Judge or presiding officer doubts whether he has jurisdiction, he may refer the matter to the Board of Revenue ; and, on any such reference being made, the said Board may order the Judge or presiding officer either to proceed with the case, or to return the plaint or appeal for presentation in such other Court as it may in its order declare to be competent to take cognizance of the suit or appeal.

“The order of the said Board on any such reference shall be final.

“24. Except as provided by or under this Regulation, or any other enactment for the time being in force,
Operation of general Acts.

“(a) the administration of the Family Domains, in so far as it is entrusted to the Mahārājā, shall be regulated by the principles and spirit of the enactments for the time being in force in the North-Western Provinces, and

“(b) the administration of the said Domains, in so far as it has not been so entrusted, shall be regulated by those enactments.

“25. In this Regulation, unless there is something repugnant in the subject or context,—
Interpretation-clause.

“‘Board of Revenue’ means the Board of Revenue of the North-Western Provinces, or such officer or officers as may hereafter be lawfully appointed to exercise, within the Province of Benares, the powers of such Board.

“‘Regulations’ includes Acts for the time being in force in the North-Western Provinces.”

13. All orders heretofore passed by the Governor Validation of past or General in Council, or the Lieutenant-Governor of the North-Western Provinces, or any other authority, regarding revisions of settlement or other matters connected with the revenue-administration of the tracts of territory mentioned in the preamble to Bengal Regulation VII of 1828, shall be deemed to have been passed in accordance with law ; and no order or decision purporting to have been passed by any civil or revenue authority under the provisions of that Regulation shall be called in question in any Court.

14. In the Scheduled Districts Act, 1874, first schedule, Part IV, and in the Laws Local Extent Act, 1874, sixth schedule, Part IV, the following shall be repealed, that is to say :—
Parts of Acts XIV and XV of 1874 repealed.

“V. The Family Domains of the Mahārājā of Benares comprising the following parganas :—
“Bhadohi and Kheyra Mángror in the Mirzapur District.
“Kaswá Rájā in the Benares District.”

15. In the Laws Local Extent Act, 1874, section 8, after clause (j), the following shall be inserted, namely :—
Clause added to Act XV of 1874, s. 8.

“(j) extend to Pargana Bhadohi or Pargana Kera Mángror in the Mirzapur District, or to Pargana Kaswá Rájā in the Benares District, any law not now in force therein.”

D. FITZPATRICK,

Secretary to the Government of India.



The Gazette of India.

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CALCUTTA, SATURDAY, MARCH 19, 1881.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV.

Acts of the Governor General's Council assented to by the Governor General.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[Second Publication.]

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 11th March 1881, and is hereby promulgated for general information:—

ACT No. XII OF 1881.

THE NORTH-WESTERN PROVINCES RENT ACT, 1881.

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